

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 November 2018

Public Authority: City of York Council
Address: West Offices
Station Rise
York
YO1 6GA

Decision (including any steps ordered)

1. The complainant has requested copies of background documents provided to the Audit & Governance Committee.
2. The Commissioner's decision is that the request is vexatious and that it would have been unreasonable in the circumstances for City of York Council ("the Council") to have been required to issue a fresh refusal notice. The Council is therefore entitled to rely on Section 17(6) of the FOIA in order not to issue a fresh refusal notice.
3. The Commissioner does not require the Council to take further steps.

Background

4. On 20 December 2016, the Commissioner issued Decision Notice FS50626507 in which she found that a particular request from this complainant was vexatious¹. That Decision Notice included a concise history of the complainant's interaction with the Council. The Commissioner does not consider it necessary to reproduce that history

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2016/1625609/fs50626507.pdf>

here but it has some relevance to understanding why the present request is also vexatious.

Request and response

5. On 13 April 2018, the complainant contacted the Council via whatdotheyknow.com and requested information in the following terms:

"At the April meeting of Audit and Governance regarding the item on the forward audit plan, prioritisation of internal audits for the next financial year, Cllr Lars Kramm expressed concern that the 'helpful' materials sent just to Councillors could not be discussed as they were not on the agenda.

"As many of the challenges the council faces could be mitigated by better internal audit selection and a rational prioritised system, it came as a surprise to me that officers (S151 and Head of Internal Audit, and The Monitoring Officer) were knowingly breaching ICO guidance as well as possible breaches of FOI regulations.

"I recall this issue has cropped up before and I wonder if by-passing ICO guidance is becoming a new way to avoid oversight from the broader Councillor body, the Executive, Chief Officers, citizens and external auditors, may I say it a silo strategy limiting knowledge to a few and we know knowledge is power.

"Accordingly please provide the following:

- 1. For this most recent incident, the materials provided to members to help them see how the auditors prioritised the audits. Please include the 'universe' of all possible audits promised to Councillors previously.*
- 2. For the calendar year 2017 and to 1April 2018 please provide all emails and materials sent by the Council and internal auditors to the committee. The S151 often promises to send materials in committee, members have asked that those materials are added to the record of the meetings, there is no evidence of either.*
- 3. Please confirm what action will be taken against the staff who are deliberately circumventing the committee system to avoid proper oversight by members, external auditors, colleagues and citizens."*

6. The Council acknowledged the request on the same day, but did not provide a formal response.

Scope of the case

7. The complainant contacted the Commissioner on 29 May 2018 to complain about the lack of a response to the request.
8. In line with her usual practice for addressing complaints about delayed responses, the Commissioner contacted the Council on 13 June 2018. The Council responded on 18 June 2018 to say that it considered that Section 17(6) applied to the request and that it would be unreasonable to issue a fresh refusal notice.
9. The complainant has requested that the Commissioner find that the Council has breached its responsibilities under Section 10 of the Act by failing to respond to the request within 20 working days. However, Section 10 relates to the time limit for the Council to *comply* with the request and, if the request is vexatious the Council is not obliged to comply with it. Furthermore, if Section 17(6) applies, the Council is not obliged to issue a refusal notice. Therefore if the Commissioner finds that the Council is entitled to rely on Section 17(6), she does not need to consider the promptness of the Council's response.
10. The Commissioner considers the scope of her investigation to be to determine whether the Council was entitled to rely on Section 17(6) of the FOIA.

Reasons for decision

11. Section 1(1) of the FOIA states that:

"Any person making a request for information to a public authority is entitled—

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

12. Section 14 of the FOIA states that:

"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious."

13. Section 17 of the FOIA states that:

"(5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

(6) Subsection (5) does not apply where—

- (a) the public authority is relying on a claim that section 14 applies,*
- (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and*
- (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request."*

14. In Decision Notice FS50626507, the Commissioner set out why she considered that that particular request was vexatious, noting at paragraph 24:

"The complainant's previous requests and communications with the Council, as well as the comments on social media all suggest that the request is the continuation of a pattern of behaviour that is unreasonably persistent and that collectively imposes a significant burden on the Council. The Commissioner is also mindful that some of the language used by the complainant is somewhat aggressive and confrontational. It also appears that this request is part of her wider protest and opposition to the Council due to what she perceives as wrongdoing or corruption by some of its officers. In the Commissioner's view this adds weight to the argument that the request is indeed vexatious."

15. The starting point for Section 17(6) to apply is that the request in question must be vexatious. However, given that Section 17(6) is designed to give public authorities some protection against the burden of persistent vexatious requests, the Commissioner has taken a proportionate approach to assessing this particular complaint. Rather than consider the question of vexatiousness anew, which is likely to involve revisiting ground already covered in the earlier decision notice, she has asked the Council to focus on the links between the current request and the request that the Commissioner previously found to be

vexatious. Having previously identified "*a pattern of behaviour that is unreasonably persistent.*" It would follow that any requests which continue that pattern would also be vexatious.

16. In its submission to the Commissioner, the Council has stated that the complainant has made numerous requests in recent years (as well as contacts via other means) and that these have "*never been limited to any specific issue, information, area of interest or complaint.*" However, the Council also points out that: "*many have the same intention of unjustly, repeatedly and publicly discrediting a number of senior officers and some Councillors with the intention of them losing their posts.*" [emphasis added]
17. The Council noted that the preamble of the request included allegations that council officers had committed breaches of the law and that the complainant had left a further annotation on the whatdotheyknow.com thread alleging that "*the Cllrs are being unfairly and I would say, unreasonably (even possibly unlawfully) constrained.*"
18. The Council also provided the Commissioner with examples of other requests which the complainant had submitted which continued to make allegations of impropriety and/or malfeasance on the part of council officers and which often focused on involvement of the Section 151 Officer.²
19. The Council also noted that, whilst it had refused some of the complainant's requests as vexatious, it had also responded to several of the requests and that it "*continues to be careful to differentiate between cases where the applicant is abusing their information rights to continue to engage in a campaign of harassment and the times, where it is felt this there is a matter of wider public interest and responding would be beneficial to progressing this interest.*"
20. The Council has argued that, given the frequency of the correspondence it receives from this complainant and the numbers of requests it considers to be vexatious, that it would be an unacceptable drain on its resources to continue to issue refusal notices. The Council states that, in all the circumstances, it would have been unreasonable to have issued a fresh refusal notice in respect of this request.

² Section 151 of the Local Government Act 1972 requires all local authorities to appoint an officer responsible for the proper administration of its financial affairs (also known as the Responsible Financial Officer).

The Commissioner's view

21. The Commissioner considers that the request was vexatious and therefore it would have been unreasonable to have expected the complainant to have issued a fresh refusal notice in the circumstances.
22. The Commissioner's view is that Section 17(6) should be used sparingly and in relation to requests on specific themes or matters which have been dealt with previously by a public authority. It should not generally be used as a "blanket ban" to prevent a particular requestor from making requests.
23. In this case the Commissioner notes that the Council does continue to respond to some of the complainant's requests and is only refusing those requests it considers to be a continuation of an underlying grievance.
24. Whilst the Commissioner considers that there may be some public interest in the specific information that the complainant has requested and that there is always an inherent interest in transparency, the value of this request does not outweigh the substantial and ongoing burden upon the Council in complying with the requests.
25. Furthermore, the Commissioner considers that it is unlikely that complying with this request (or even issuing a fresh refusal notice) would do anything to stem the stream of requests from this particular requestor (and she notes that the requestor had submitted at least 17 requests between the previous decision notice and the current request). The Commissioner also notes that the Council is still making efforts to comply with requests which it recognises as being for information with a strong public interest.
26. Therefore the Commissioner concludes that the use of Section 17(6) of the FOIA was appropriate in this case, hence the Council was not obliged to respond to the complainant's information request.

Right of appeal

27. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

28. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
29. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Ben Tomes
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