

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 January 2015

Public Authority: Horsham District Council

Address: Park North
North Street
Horsham
West Sussex
RH12 1RL

Decision (including any steps ordered)

1. The complainant has made a request to Horsham District Council ("the council") for information relating to classes, complaints, and staff training at a public leisure centre. The council refused the request on the basis that it was vexatious under section 14(1) of the Freedom of Information Act ("the FOIA").
2. The Commissioner's decision is that the council has correctly refused the request as vexatious under section 14(1). However, the council provided its response outside of 20 working days, and therefore breached the requirement of section 10(1).
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 3 April 2014, the complainant wrote to the council and requested the following:

"1. Equipment. Thank you for confirming that the equipment was made available at the start of last Sunday's class. As the CCTV is a record of a public facility paid for through public funds, I wish

the CCTV to be made available at a mutually convenient date and time...

[...]

11. Complaints Procedure: Please provide a copy of the comments, complaints and suggestions to HDC regarding DC Leisure over the past two years. This request falls under the FOIA and therefore, there are 20 working days from the date of the request to the provision of the data...

[...]

13. Customer Service Training: In addition to the FOIA made above, please provide the following:

- Copy of the induction programme;*
- The frequency of internal refreshers;*
- The number of staff with NVQs in customer service and the relevant NVQ level attained;*
- Details of the feedback from Mystery visits and calls over the past two years."*

5. The council responded on 12 May 2014. It refused the request on the basis that it was vexatious under section 14(1).
6. The council provided an internal review on 6 June 2014 in which it maintained its position.

Scope of the case

7. The complainant contacted the Commissioner on 27 June 2014 to contest the council's response. Specifically, she contested the council's refusal under section 14(1).
8. The Commissioner considers that the scope of this case is the determination of whether the council has correctly identified the complainant's request as vexatious under section 14(1).

Reasons for decision

Section 14(1) – vexatious requests

9. Section 14(1) of states that:

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

10. The Commissioner has recently published new guidance on vexatious requests and for ease of reference, this can be accessed here: http://www.ico.org.uk/news/blog/2013/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx
11. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. Sometimes, it will be obvious when requests are vexatious, but sometimes it may not. In such cases, it should be considered whether the request would be likely to cause a disproportionate or unjustified level of disruption, irritation or distress to the public authority. This negative impact must then be considered against the purpose and public value of the request. A public authority can also consider the context of the request and the history of its relationship with the requester when this is relevant.

The complainant's position

12. The complainant has advised the Commissioner that the request relates to a complaint that was submitted to the council on 23 March 2014, in which she complains about service standards at a public leisure centre. This complaint was subsequently responded to as a 'stage 2' complaint by the Director of Community Services on 31 March 2014. Following further appeal by the complainant on 3 April 2014, the Chief Executive reviewed the complaint and provided a 'stage 3' response on 24 April 2014 which maintained the council's earlier response and referred the complainant to the Local Government Ombudsman ("the LGO") should they remain dissatisfied.
13. The complainant disagrees with the council's position that the requests are only related to her complaint, as she explains that there is a high level of dissatisfaction amongst other individuals who use the leisure centre. As such, she considers that there is wider public benefit in the requested information being disclosed.

The council's position

14. The council has advised the Commissioner that it considers the complainant's requests are an attempt to utilise the FOIA to revisit and extend the dispute that the complainant has with the council. The council has drawn the Commissioner's attention to the fact that the requests for information are incorporated into correspondence about the dispute, and seek information that the council refers to within its stage 2 response. The council therefore proposes that there is limited public value in the request.

The Commissioner's analysis

15. Firstly, the Commissioner would like to highlight that there are many different reasons why a request may be refused on vexatious grounds, as reflected in the Commissioner's guidance. There are no prescriptive "rules", although there are generally typical characteristics and circumstances that assist in making a judgement about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed as vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates them. A commonly identified feature of vexatious requests is that they can emanate from some sense of grievance or alleged wrong-doing on the part of the authority.
16. The Commissioner's guidance has emphasised that proportionality is the key consideration for a public authority when deciding whether to refuse a request as vexatious. The public authority must essentially consider whether the value of a request outweighs the impact that the request would have on the public authority's resources in providing it.

The purpose of the request

17. Having consulted the provided correspondence between the two parties, the Commissioner has identified that the requests clearly relate to the complainant's concerns about customer service at the leisure centre. As such, the Commissioner believes it is reasonable to conclude that the request has been made as a means of pursuing the dispute against the council. This is further suggested by the fact that the three requests for information are contained in a larger piece of correspondence requesting a 'stage 3' response from the council's Chief Executive.
18. While it is recognised that the dispute is a matter of personal importance to the complainant, the Commissioner does not consider that there is strong public value in the requests. It is apparent, having read the correspondence between the two parties, that the matter relates to the complainant's personal experience, and would need to be referred to the appropriate public authority should the complainant remain dissatisfied with the council's response to her complaint. The complainant has

acknowledged this in her complaint to the Commissioner, by confirming that the matter may be referred to the LGO should it not be resolved locally.

The burden upon the authority

19. The Commissioner has reviewed the context of the request in order to consider the burden it may have on public resources. Having considered this context, the Commissioner perceives that whilst the matter of the complainant's dispute with the council has only arisen recently, it has already been addressed by two senior council officers as part of the council's complaints process.
20. Having then continued to consider the nature of the requests, the Commissioner has identified that a large proportion of the sought information is likely to be exempt under the terms of the FOIA. The requested CCTV footage, in addition to the qualifications of staff, is highly likely to engage the exemption for third party personal data provided by section 40(2). Additional to this, the requested "comments, complaints and suggestions" may potentially engage both section 40(2), and the exemption for information provided in confidence by section 41(1). As such, any response to the complainant's response is likely to incorporate a refusal notice for a large proportion of the sought information. The Commissioner considers that the limited amount of information that would be likely to be disclosed further reduces the public value of the request.

Conclusion

21. While the Commissioner appreciates that the substantive issue remains a matter of personal importance to the requester, it has been identified that the request relates heavily to a contemporaneous dispute between the complainant and council in respect of customer service standards at a local leisure centre. The Commissioner understands that this complaint has since been concluded by the council, and that any further dispute would need to be referred to an appropriate public authority, such as the LGO.
22. Having considered that the substantive matter is a personal one relating to the complainant, and that any further dispute about the matter would need to be referred outside the council, it has been identified that the request is highly unlikely to resolve the complainant's concerns to her satisfaction. Additional to this, it has been identified that a majority of the sought information, if held, would be likely to engage one or more exemptions provided by the FOIA, which further reduces the public

value of request. On this basis of these factors, the Commissioner has concluded that the public value of the request is limited, and does not justify the utilisation of public resources that providing a response would require. As such, the Commissioner has concluded that the council's identification of the request as vexatious was correct.

Section 10(1) – Time for compliance

23. Section 10(1) requires that a public authority must issue its substantive response within the time for compliance, which is 20 working days following the date on which the request is received.
24. In this case the Commissioner has identified that the council issued its response outside 20 working days, and therefore breached the requirement of section 10(1).

Right of appeal

25. 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

26. 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.
27. 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

Andrew White
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