

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 7 November 2016

**Public Authority:** Liverpool City Council  
**Address:** Municipal Buildings  
Dale Street  
Liverpool  
L2 2DH

#### **Decision (including any steps ordered)**

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1. The complainant has requested information from Liverpool City Council ("the Council") about legal work undertaken and legal advice sought. The Council refused the request under section 14(1) of the Freedom of Information Act ("the FOIA"). The complainant subsequently contested the Council's refusal.
2. The Commissioner's decision is that the Council has incorrectly refused the request under section 14(1).
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Issue a fresh response to the request that does not rely upon section 14(1).
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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5. On 14 January 2016 the complainant requested:

*Please provide the total number of hours of legal work given to councillors by council employees.*

*The total cost of external legal advice sought by the council on behalf of councillors.*

*The total cost of external legal advice sought by the council regarding council business.*

6. On 15 January 2016 the Council responded and refused the request the under section 14(1).
7. On 15 January 2016 the complainant requested an internal review.
8. On 16 February 2016 the Council provided the outcome of its internal review. In this it maintained its original position.

## Reasons for decision

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### Section 14(1) – vexatious requests

9. Section 14(1) states:

*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 published guidance on vexatious requests<sup>1</sup>. 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

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

can also consider the context of the request and the history of its relationship with the requester when this is relevant.

### The Council's position

11. The Council considers that the request seeks information which is either not held or already publically accessible. The Council has explained that 'legal work' is not given to councillors, and that neither is legal advice sought on behalf of individual councillors. Additionally, the costs for externally sought legal advice in excess of £500 are already published by the Council in accordance with Government requirements.
12. The Council has further informed the Commissioner that there is significant background context between itself and the complainant, who has communicated with the Council for 8 years. These communications have included abusive language, threats, and allegations against both Council officers and councillors. This activity has led to the complainant being placed on the Council's 'Vexatious List' from 2009 onwards. The Council has also been applied for, and been granted, a restraining order and injunction prohibiting the complainant from contacting it.
13. The Council has also referred the Commissioner to a recent Local Government Ombudsman complaint in which the Council provided its justification for the complainant being placed on its 'Vexatious List', and the subsequent blocking of the complainant's email address.

### The Commissioner's analysis

14. Firstly, the Commissioner would like to highlight that there are many different reasons why a request may be vexatious, 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.
15. 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. Aspects that can be considered in relation to this include the purpose and value

of the information requested, and the burden upon the public authority's resources.

*The purpose and value of the requests*

16. The complainant has not provided any contextual information about the purpose or value of the request. However, the Commissioner recognises that the request relates to legal work undertaken, and legal advice sought, by the Council and the costs associated with this.

*The burden on the Council*

17. In the circumstances of this case the Commissioner has carefully reviewed the Council's submissions. In doing so, it has been noted that there is limited evidence provided of the complainant's recent interaction with the Council, despite the Council being invited to provide this. The evidence that has been provided includes a 2009 Anti-social Behaviour Order against the complainant; a newspaper article deriving from 2011 which relates to the complainant, but not the complainant's contact with the Council; correspondence relating to the complainant's appeal to the LGO in 2015; and two pieces of email correspondence from the complainant, one seemingly undated, and the other deriving from 9 October 2015.
18. Although the history of the complainant's contact with the Council has therefore been noted, limited evidence has been provided to the Commissioner of recent communication, and no associated information requests have been referenced by the Council. Whilst it has been noted that the complainant has been placed on the Council's 'Vexatious List', this fact is not in itself a justification for applying section 14(1). Limited evidence of on-going burden has been provided, despite the Council referring in its submission to the nature and frequency of the complainant's contact.

*The Commissioner's conclusion*

19. In the circumstances of this case the Council has provided limited evidence to support its application of section 14(1). Although it is apparent that the complainant has communicated with the Council for a number of years, limited evidence of recent contact has been provided that correlates to the Council's arguments for burden.
20. The Commissioner's guidance on section 14(1) clearly advises public authorities that this exclusion "*can only be applied to the request and not the individual who submitted it*". In the circumstances of this case the Commissioner considers that significant weight appears to have been ascribed to the complainant's placing on the Council's 'Vexatious List', and the Council has failed to properly consider the requester's

rights under the terms of the FOIA. Whilst the Commissioner's guidance also advises that a public authority can consider the context of a request in deciding whether to apply section 14(1), only limited and incohesive evidence of this context has been provided.

21. Having considered these factors, the Commissioner must conclude that the Council has incorrectly applied section 14(1).

## Right of appeal

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22. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

23. 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.
24. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**