

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 6 February 2017

**Public Authority:** London Borough of Bexley  
**Address:** Civic Offices  
2 Watling Street  
Bexleyheath  
Kent  
DA6 7AT

#### Decision (including any steps ordered)

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1. The complainant made a series of requests to the London Borough of Bexley (the "Council") for information relating to the role of Head of Legal Services and Monitoring Officer for the Council.
2. The Commissioner's decision is that the Council is entitled to rely on section 14(1) and section 40(2) of the FOIA to refuse these requests. Therefore, she does not require the Council to take any further steps.

#### Background

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3. On 24 May 2016 the complainant wrote to the Council and requested information in the following terms:

*"Please provide the job description and person specification for the role of "Head of Legal Services and Monitoring Officer for the London Borough of Bexley."*

*Please provide the job description and person specification for the role of "Manager of Legal Services"*

4. On 7 June 2016 the Council responded. It provided the complainant with copies of the documents requested. This included:
  - the job description and person specification for the Legal Team Manager, and
  - the job description and person specification for Head of Legal Services

5. The Commissioner will not consider the Council's handling of the above request as the Council provided the information to the complainant. However, this request will be referred to within some parts of this decision notice as it is considered relevant.

## Request and response

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6. On 9 June 2016 the complainant submitted a further information request to the Council (Council ref: **3198297**) asking for the following:

*"Professional Membership evidencing ability to function in a professional discipline at a senior level, as appropriate for the post. Please provide details of the Professional Membership held by [named individual], the current Head of Legal Services."*

7. On 16 June 2016 the complainant submitted to the Council another FOIA request (Council ref: **3216899**) in the following terms:

*"In the person specification for the role of Head of Legal Services and Monitoring Officer, its states under the heading, Selection Criteria (b) Education and Formal Training, that it is an essential requirement in order to carry out the role, to have a post graduate qualification of either a qualified solicitor or a qualified barrister. Please provide a certified copy of [named individual's] Solicitors Practising Certificate or a certified copy of his Barristers Practising Certificate,"*

8. On 7 July 2016 the Council provided the same response to both of the complainants' requests. It confirmed that it holds the information requested but withheld it under section 40(2) of the FOIA. The Council also confirmed that the named individual is suitably qualified and experienced to fully meet the requirements of his role.

9. On 15 July 2016 the complainant asked for an internal review of the Council's decision (Case ref: **3216899**) to withhold the information under section 40(2) of the FOIA. The complainant disputed the Council's statement that named individual is suitably qualified and experienced to fully meet the requirements of his role.

10. On 1 August 2016 the complainant expressed his dissatisfaction with the Council's handling of his request (Council ref: **3198297**) and he asked for a review of the Council's decision. He disputed its original statement about the suitability of named individual to the role. The complainant argued that named individual does not hold professional membership to support his ability appropriate for the post.

11. On 1 August 2016 the complainant submitted a further request for information (Council ref: **3343499**) in the following terms:

*"Please provide a copy of the application form submitted by [name redacted] to Bexley Council when applying for the role of Head of Legal Services. Please provide details of evidence, in the form of professional qualifications and/or professional membership evidencing ability to function in a professional discipline at a senior level, as appropriate for the post, produced by [name redacted] when he applied the role of Head of Legal Services. Please provide the names of the individuals who interviewed and appointed [name redacted] to the role of Head of Legal Services."*

12. On 18 August 2016 the Council responded. It considered the complainant's two FOIA requests (Council ref: **3198297** and **3343499**) to be vexatious and applied section 14(1) to both of these.

### Scope of the case

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13. The complainant contacted the Commissioner on 25 August 2016 to complain about the way his request for information had been handled.
14. The Commissioner considers the scope of the case is to determine whether the two requests (Council ref: **3198297** and **3343499**) are vexatious and if the Council is entitled to rely on its application of section 14.
15. In regards to the third request (Council ref: **3216899**) dated 16 June 2016, the Commissioner will determine whether the Council was correct to apply section 40(2) of the FOIA to this request.

### Reasons for decision

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#### Section 14(1) – vexatious requests

16. Section 14(1) 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. There is no public interest test.

17. The term “vexatious” is not defined in the FOIA. The Upper Tribunal (Information Rights) considered in some detail the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*.<sup>[1]</sup>

18. The Tribunal commented that vexatious could be defined as the “*manifestly unjustified, inappropriate or improper use of a formal procedure*”.

The Tribunal’s definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.

19. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public authority and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) harassment or distress of and to staff.

20. The Upper Tribunal did however also caution that these considerations were not meant to be exhaustive. Rather, it stressed the:

*“importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests” (paragraph 45).*

21. In the Commissioner’s view the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.

<sup>[1]</sup> GIA/3037/2011

<sup>[2]</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

22. The Commissioner has identified a number of indicators which may be useful in identifying vexatious requests. These are set out in her published guidance on vexatious requests.<sup>[2]</sup> The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
23. In this case the Upper Tribunal defined a vexatious request as one that is *"manifestly unjustified, inappropriate or improper use of a formal procedure."* The Tribunal made it clear that the decision of whether a request is vexatious must be based on the circumstances surrounding the request.
24. In order to reach a decision on whether the request is vexatious, the Commissioner has obtained submissions from both the complainant and the Council to understand the circumstances surrounding the request.

### **The Council's position**

25. The Council said it is satisfied that the subject matter of the information requests had been dealt with appropriately. It is of the view that there is no value in the Council spending further time and resources on an issue that had been explained to the complainant. Specifically, that the named individual is fully qualified to undertake the requirements of his role as Head of Legal Services & Monitoring Officer.
26. The Council therefore considered the two requests (**3198297** and **3343499**) as vexatious under section 14(1) of the FOIA and provided its arguments:

### **Personal grudges**

27. The Council reported that the complainant had been targeting his requests towards a particular employee, and that the complainant had proceeded to make unfounded accusations.
28. It said that from January 2013 there had been a total of 12 occasions where the complainant had made complaints about the named individual or sought to obtain information about him. The Council stated that there had been six information requests or reviews about the named individual from 24 May 2016 to 1 August 2016.

### **Unreasonable persistence**

29. The Council argued that the complainant continued to submit further requests on the same matter whilst also making accusations of wrongdoing and criminality by both the named individual and the Council. It said that the Council had assured the complainant that the named individual is qualified to undertake the requirements of his role but the complainant continued to persist with his requests and accusations.
30. The Council reported that of the six information requests and reviews about the named individual's qualifications and professional status, two of the complainant's requests had overlapped. This occurred on 9 June 2016 when the complainant submitted his request. Then seven days later (16 June 2016) and before the Council had been able to respond to the first request, the complainant made a further similar request to the Council.

### **Unfounded accusations**

31. The Council drew the Commissioner's attention to the complainant's request for an internal review. This demonstrates the complainant's unfounded accusations and his dispute of the Council's response that the named individual is suitably qualified and experienced to fully meet the requirements of his role. On the basis that there was no record to confirm this the complainant has made a number of accusations:
  - The named individual had forged his qualifications.
  - The named individual had misrepresented himself.
  - The named individual had been appointed as Head of Legal Services or (department redacted) in a different name from the name used to obtain his professional qualification as a Solicitor/Barrister.
  - The Council is complicit in criminality and is trying to conceal a criminal conspiracy or misconduct in Public Office.

32. The internal review request also contained the complainant's view:

*"[Name redacted] cannot therefore be suitably qualified and experienced to fully meet the requirements of his role, as he is not able to function in a professional discipline at a senior level, as appropriate for the post, because he does not possess professional membership evidencing ability to function as such."*

33. The complainant stated that the Law Society and the Bar Council provide the information requested and that it is freely available on request to members of the public. He argued that neither of these professional bodies has any record of the named individual being registered with them as a qualified Solicitor or as a qualified Barrister.

34. The Council provided the Commissioner with reports which contained numerous accusations regarding the named individual on a website called "*Bexley-is-bonkers*". The nine separate reports on this website illustrate repeated accusations that named individual is unqualified to undertake his role. The Council considered this to be a serious concern and an unjustified series of untruths that can be seen as an intention to denigrate the named individual and to discredit his professional reputation.

### **Whether the request has any purpose and value**

35. The Council believed that if it tried to provide the information requested, it would be equivalent to having to provide details of how every member of staff meets the person specification criteria for their role at the Council. This would be, the Council considered, a manifestly unreasonable approach and is likely to undermine the purpose of the FOIA.

36. The Council added that there is no apparent or legitimate reason to single out the named individual and to proceed to make unsubstantiated accusations - forgery, misrepresentation, criminal conspiracy or misconduct in Public Office, against the Council and the specific employee. The Council explained that the person specification requirements for Head of Legal Services role were determined by the Council and verified through the recruitment and interview process.

37. The Council said it was a concern that named individual had been singled out and pursued on the basis of the complainant's opinions. The complainant stated that he had reason to doubt that the named individual is qualified and he had reason to believe that any qualifications which the named individual had presented were either forged or false.

## Context and history

38. In terms of the wider context and history in which a request is made, the Council considered other requests submitted to the Council by the complainant. It noted the request of 25 June 2014, case reference: **FS5055767** - the outcome of this case being that the ICO upheld the Council's decision that the request was vexatious.
39. The Council reported that in total 113 information requests or complaints have been made by the complainant since January 2013. It said that the volume of requests had imposed a significant burden on the Council's limited resources which amounted to 18.5 weeks of staff time. The Council provided the Commissioner with a list of the 113 complaints and requests which the complainant had made.
40. The Council referred the Commissioner to entries on the website "*Bexley-is-bonkers*". This included a comment regarding the complainant having submitted three separate requests about the named individual's alleged lack of qualifications. It also contains the complainant's repeated accusations made about the named individual having provided forged or false qualifications. The Council considers these repeated requests relating to the same subject and the continuous unfounded accusations against the individual in question, to be a serious concern and a misuse of the FOIA.

## The Commissioner's position

41. The Commissioner accepts the Council's representations in regards to the history and the nature of the complainant's requests.
42. The Commissioner recognises the unreasonable persistence and the unfounded accusations made by the complainant. In particular, the requests which had been directed towards a particular employee. From May 2016 to August 2016 the complainant made three requests to the Council for information concerning the same issue. The Commissioner viewed the record of complaints/FOIA requests which the Council had provided and this totalled up to 113 items of correspondence since January 2013. This reveals a disproportionate and unjustified level of disruption by the complainant.
43. The Commissioner notes the burden of the requests on the Council, and she has done so in terms of the disruption, irritation and level of stress which the requests would generate. The Commissioner is aware that the Council had spent an inappropriate amount of time responding to the requests and that a response would sometimes lead to a further request.



44. The Commissioner has considered whether the requested information has serious purpose and value to the complainant. She understands that the information relates to the qualifications of a named employee at the Council. The complainant is of the view that named individual is unqualified for his role at the Council. He believes that the Council is trying to cover up a criminal conspiracy or misconduct in Public Office and therefore he thinks this is the reason for the Council's refusal to comply with his requests for information.
45. Whilst the complainant has made serious allegations, some of which are of a criminal nature, there has not been any proof provided that these have been investigated and upheld by appropriate regulatory bodies such as the LGO or the Police.
46. The Commissioner considers the requests as obsessive and persistent. She is satisfied that the continuing requests are a means by which the complainant is trying to reopen a matter that had already been addressed. She is of the view that the complainant is using the FOIA to sustain dialogue with the Council about this matter and that this is a clear misuse of the FOIA and its purpose. The FOIA provides fundamental rights to the public to request access to recorded information held by public authorities. It should not be used to vent dissatisfaction with issues which have already been dealt with, independently scrutinised and are considered as closed.
47. The Commissioner considers the volume and the repeated nature of the requests demonstrate an unwarranted interference with the Council's functions. Therefore, the Commissioner's decision is that the requests are vexatious and the Council is correct to rely on section 14 of the FOIA to refuse disclosure of the information.

#### **Section 40(2) third party personal data**

48. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the Act would breach any of the data protection principles or section 10 of the DPA.
49. The Council determined that section 40 applies to the two requests for information (**3198297** and **3216899**) as it considered it to be personal data. However, as the Commissioner has determined that section 14 has been correctly applied to case **3198297**, she will not go on to consider whether section 40(2) is engaged in relation to this request.

50. In considering these arguments and whether the disclosure of this information is in breach of the DPA, the Commissioner is mindful of the fact that disclosure under the FOIA is to be considered as disclosure to the world at large.
51. Firstly, the Commissioner must consider whether the requested information is personal data. Personal data is defined in Section 1 of the DPA as follows:
- “personal data” means data which relate to a living individual who can be identified –*
- (a) from those data, or
  - (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.”
52. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the data protection principles under the DPA. The Commissioner notes that in this case, the Council considered disclosure would breach the first data protection principle.
53. Having accepted this she must now go on to consider if disclosure would contravene any of the data protection principles. The first principle requires, amongst other things, that the processing of personal data is fair and lawful.

### **Whether the requested information is personal data**

54. In this case, the Commissioner notes that the requested information is a certified copy of the named individual's Solicitors Practising Certificate or a certified copy of his Barristers Practising Certificate. Because of the nature of the requested information, it is clear that this is personal data.

### **First data protection principle**

55. The first data protection principle requires, amongst other things, that the processing of personal data is fair. In considering fairness the Commissioner will take into account the reasonable expectations of the data subjects, what would be the consequences of disclosure, and the legitimate interests in the disclosure of the information in question.

## Reasonable expectations of the individuals

56. When considering whether the disclosure of personal data is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the data subject. However, their expectations do not necessarily determine the issue of whether the disclosure would be fair. Public authorities need to decide objectively what would be a reasonable expectation in the circumstances.
57. The Council had said that in releasing the job description initially for the Head of Legal Services, it had taken into account the ICO guidance regarding requests for personal data about public authority employees. The Council argued that the complainant had previously made complaints about the named individual and he is aware that the named individual is Head of Legal Services and Monitoring Officer. Therefore, the Council decided to release the job description on the basis that it is likely that it would be fair to release it in response to an FOIA request.
58. The Council determined that section 40 applies to the two requests **3198297** and **3216899**. It considered it would not be fair to disclose the information requested. The Council said that it could see no genuine public interest in anyone pursuing whether the named individual met each of the person specification requirements for the role he has fully undertaken for over five years.
59. The Council explained that the degree to which individual Council officers meet or exceed the relevant person specification requirements are matters that are dealt with under recruitment and interview processes. As such and being part of the employment application process, the Council is of the view that these matters constitute personal information.
60. The Council provided further arguments as to why the disclosure of the information would be unfair. These are contained in the Confidential Annex attached to this Notice.

## The Commissioner's position

61. The Commissioner accepts that there is a legitimate public interest in public confidence that a public authority's employees are qualified to fulfil their role, especially if they hold a more senior role. However, she also considers that the information already released by the Council has gone towards meeting that interest. She does not consider that the complainant has provided substantive evidence to support the serious allegations that he has made. She has also noted the persistent nature of the complainant's requests in relation to the named individual.

62. Taking these factors into account the Commissioner is satisfied that the disclosure of the requested information would be unfair and would contravene the first data protection principle. Consequently, the Commissioner finds that section 40(2) of the FOIA applies in this case.

## Right of appeal

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63. 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)

64. 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.
65. 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** .....

**Rachael Cragg**  
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