

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 23 March 2017

**Public Authority:** Southwark Council

**Address:** PO BOX 64529  
London  
SE1P 5LX

#### Decision (including any steps ordered)

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1. The complainant requested from Southwark Council copies of all leaseholder application forms for loans in respect of major works/service charge arrears for the periods 2012 and 2010-2013.
2. Southwark Council refused to provide the requested information citing Section 14(1) of the FOIA (vexatious requests).
3. The Commissioner's decision is that Southwark Council has correctly applied Section 14(1).
4. The Commissioner does not require Southwark Council to take any steps to ensure compliance with the legislation.

#### Request and response

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5. This Decision Notice relates to two requests made by the complainant. The first on the 27 April 2016 and the second on 14 October 2016. Both relate to information on application forms for loans in respect of major works/service charge arrears and both have been refused by Southwark Council (the Council) as being vexatious under Section 14(1) of the FOIA.

#### The first request

6. On 27 April 2016 the complainant wrote to the Council and requested information in the following terms:

*"Please provide copies of all application forms for loans in respect of major works/service charge arrears for the period 2010-2013".<sup>1</sup>*

7. The Council responded on 19 May 2016. It stated that it was not processing the request under the FOIA as it considered it to be vexatious. The Council also pointed out that it had since received a revised request on 9 May 2016 for copies of all application forms for loans in respect of major works/service charge arrears for the period 2013-2015.<sup>2</sup>
8. On 19 May 2016 the complainant requested an internal review.
9. Following an internal review the Council wrote to the complainant on 14 June 2016. It stated that it was upholding its application of Section 14 of the FOIA on the basis that the request was vexatious.

### **The second request**

10. On 14 October 2016 the complainant wrote to the Council and requested information in the following terms:

*"Please would you provide copies of all leaseholder loan applications for the period 2012".*

11. The Council responded on 21 October 2016 stating it was refusing the request under Section 14 of the FOIA for being vexatious.
12. On 21 October 2016 the complainant requested an internal review.
13. Following an internal review the Council wrote to the complainant on 1 November 2016. It stated that it was upholding its application of Section 14 of the FOIA on the basis that the request was vexatious.

### **Scope of the case**

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<sup>1</sup> On the same day (27 April 2016) the complainant also requested copies of all loan application forms for the period 2015-2016 in respect of leaseholder major works/service charge debt for the period 2015-2016.

<sup>2</sup> This request was subsequently dealt with by the Commissioner in her Decision Notice FS50604998 when she ordered the Council to disclose redacted copies of the leaseholder application forms for the period 2013-2015.

14. The complainant contacted the Commissioner in November 2016 to complain about the way her requests for information had been handled. In particular, she asked the Commissioner to investigate the Council's application of Section 14(1) of the FOIA to her above requests dated 27 April and 14 October 2016.

## Chronology

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15. The Commissioner contacted the Council on 2 December by email and again on 7 December 2016 by telephone to request any further comments and arguments it wanted to advance in support of its application of Section 14(1) of the FOIA.
16. The Council responded on 21 December 2016 with a detailed explanation as to why it considered the requests to be vexatious with reference to the Commissioner's Guidance on Section 14 of the FOIA. It explained that to date it had received 20 requests from the complainant relating to loan application forms, section 146 notices and possessions since 2015. The Council provided a summary of these which is shown in the table below. The requests which are the subject of this Decision Notice are highlighted in yellow.

Request No	Date rec'd	Summary of info requested	Council's response	Decision Notice and outcome	Tribunal appeal and outcome
1	19/06/2015	Debt enforcement policy for leaseholders	Info disclosed	None	None
2	10/08/2015	Section 146 Notices	Info disclosed with redactions	Decision Notice upholds Council's application of section 40(2) of FOIA	Complainant's appeal dismissed
3	09/09/2015	Forfeiture of properties by leaseholders	Info disclosed with S. 40(2) redactions. Notice that similar requests might be considered vexatious	None	None

4	14/09/2015	No of leaseholder possession cases filed at court where council leaseholder	Info disclosed	None	None
5	15/09/2015	Grounds for bringing possession cases against leaseholders plus documents	Info disclosed with some redactions under S.32 FOIA. Notice that similar requests might be considered vexatious.	None	None
6	23/09/2015	Reason for breaches of 5 leases filed at court 2010-2015; decisions of FTT on these and copies of FTT permission to serve s.146 notices; plus documents	Info disclosed with some redactions under S.32 FOIA. Notice that similar requests might be considered vexatious.	None	None
7	23/09/2013	Breakdown of debt types for each leaseholder served with s.146 notice	Info disclosed Notice that similar requests might be considered vexatious.	None	None
8	28/09/2015	Copy of leaseholder application forms for loans /charging orders re debts for major works/service charges 2010-2015 (request subsequently refined for the period 2013-2014)	Info on <b>loans</b> disclosed with redactions under S.40(2)  Info on <b>charging orders</b> not held S.1	Decision Notice upholds Council's position  Decision Notice upholds Council's position	None  None
9	15/01/2016	Numbers of and reasons for s.146 notices served on	Info disclosed after scope of	None	None

		leaseholders from and court outcomes	request clarified		
10	20/01/2016	Number of charging orders and loans granted to leaseholders re debt for major works/ service charges and copies of approved application forms	Info withheld under S.14.	None	None
11	28/01/2016	Split of 196 s.146 notices served; value of loans granted to leaseholders; number of charging orders on leaseholder; numbers of possession cases progressed to court	Info withheld under S.14.	None	None
12	18/02/16	Final court orders re 198 applications re s.146 notices	Info withheld under S.14.	Decision Notice upholds Council's application of S.14	None
13	18/02/2016	Statement of case for 198 cases	Info withheld under S.14.	None	None
14	17/04/2016	Loan application forms for major works/service charge debts 2010-13	Info withheld under S.14.	Current Decision Notice FS50655545	-
15	27/04/2016	Loan application forms for major works/service charge debts 2015-16	Info withheld under S.14.	None	None

16	27/04/2016	Charging orders granted to leaseholders 2013-16	Info withheld under S.14.	None	None
17	27/04/2016	Charging orders granted to leaseholders 2010-13	Info withheld under S.14.	None	None
18	28/07/2016	Loans offered in respect of mandatory loans for pensioners/RTB leaseholders on income support	Info withheld under S.14.	None	None
19	14/10/2016	Loan application forms for major works/service charge debts 2012	Info withheld under S.14.	Current Decision Notice FS50655545	-
20	23/11/2016	Leaseholder loan applications Jan 2016-todate	Info withheld under S.14.	None	None

17. The Commissioner contacted the complainant 19 January 2017 to seek her clarification as to what she considered the purpose of her requests for the loan application forms to be. The Commissioner also summarised her understanding of the position from the information provided.
18. The complainant responded on the same day and confirmed that the purpose behind her request was to establish whether the Council had discriminated against her by;
- (a) Not offering her the opportunity to take out a loan to pay off her outstanding service charge arrears and
  - (b) Treating her differently to other leaseholders by demanding payment for outstanding service charge arrears prior to her selling her property, an action which she believed to be fraudulent and unlawful.
19. On 20 January 2017 the Commissioner wrote to the Council and invited any further comments it wished to make in response to the claimed purpose behind the complainant's requests.

20. The Council responded on 6 and 17 February 2017. It provided the Commissioner with copies of some redacted loan application forms it had previously disclosed to the complainant in response to an earlier request as ordered by the Commissioner in her Decision Notice FS50604998. It also said it considered the complainant was treated in the same way as all other leaseholders. The Council pointed out that leaseholders are made aware of all available payment options, including any discretionary loan for major works charges, when they are issued with an invoice. It said that the right to a mandatory loan in certain circumstances would appear on the invoice itself and by law must be applied for in writing within six weeks of the leaseholder receiving the demand. Having reviewed copies of invoices issued to the complainant dating back to 2005 and subsequent correspondence with her in 2006 the Council said these made reference to the service charge loans and payment options available.
21. On 20 February 2017 the Council provided the Commissioner with copies of the invoices, notices and correspondence in relation to the complainant's particular case.

## Reasons for decision

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### Section 14 vexatious requests

22. Section 14(1) of the FOIA provides that a public authority is not obliged to comply with a request that is vexatious.
23. 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>3</sup>. 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.
24. The Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues:

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<http://administrativeappeals.decisions.tribunals.gov.uk/judgmentfiles/j3680/%5B2015%5D%20AACR%2034ws.rtf>

- the burden imposed by the request (on the public and its staff);
- the motive of the requester;
- the value or serious purpose of the request; and
- any harassment or distress of and to staff.

25. Consistent with that Upper Tribunal decision, which established the concepts of 'proportionality' and 'justification' as central to any consideration of whether a request is vexatious, the Commissioner's guidance on section 14(1)<sup>4</sup> states:

*"Section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress".*

26. Her guidance recognises that sometimes a request may be so patently unreasonable or objectionable that it will obviously be vexatious, but that in cases where the issue is not clear-cut the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
27. This will usually mean weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request.

### ***The complainant's view***

28. The complainant has informed the Commissioner that the purpose behind her requests for copies of leaseholder loan applications is to compare her own situation with that of other leaseholders at the time the Council served its Section 146 Notice on her and to see the level of debts other leaseholders had, which were much larger than hers.
29. It is the complainant's belief that the Council discriminated against her by not offering her the opportunity to take out a loan to pay off any outstanding service charge arrears and by treating her differently to other leaseholders by demanding payment for the outstanding service charge arrears prior to selling her property. She believes that the actions taken by the Council in this respect were fraudulent and unlawful.

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<sup>4</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>



### ***The Council's view***

30. The Council explained to the Commissioner the reasons why it relied on Section 14 of the FOIA to refuse the complainant's requests with specific reference to the burden placed upon it, the motive/value/purpose of the request and any harassment/distress to its staff.
31. The requests which are the subject of this Decision Notice relate to information on the loan application forms for the periods 2012 and 2015-16 in respect of leaseholder major works/service charge debts.

### ***The burden imposed by the request***

32. The Council pointed out to the Commissioner that it has received numerous requests from the complainant relating to loan application forms, section 146 notices and possessions since June 2015. By 21 December 2016 there had been 20 such requests. These are detailed in the table above and illustrate that the information sought includes, number of charging orders/loans granted to leaseholders in respect of major works/service charges and copies of leaseholder application forms for these, the number of Section 146 notices served and an analysis of these, processes relating to the service of section 146 notices, the setting of fees, total costs of barristers, the grounds for forfeiture of leases, the number of leasehold possessions filed at court, reasons for breach of leases where leaseholders were taken to court, and breakdown of debt types for leaseholders served with section 146 notices.
33. The Council has noted that some of the requests are overlapping in that they repeat in part previous requests; for example, request 19 in the table above repeats in part request 8; others have been for the same information but for different time periods, in order to avoid exceeding the 18 hour/£450 limit under Section 12 of the FOIA.
34. The Council has stated that of the 20 related requests detailed in the table above, 17 have led to a request for an internal review and to date seven appeals have been made to the Commissioner. Of the appeals referred to the Commissioner, one has already resulted in a Decision Notice upholding the Council's application of Section 14 of the FOIA.
35. The Council has pointed out that it has already provided the complainant with redacted copies of the leaseholder loan application forms for 2013-15. See request 8 in the table above. The provision of this information (in respect of just over 400 application forms) required more than 18 hours to compile the response and further hours to redact the third party personal data. Although the Council accepts that redaction time cannot be taken into account when dealing with a request under Section 12 of the FOIA, it has stated that dealing with these requests is

nonetheless placing a significant burden on staff resources which is relevant under Section 14.

36. The Council has stated that when looking at the requests cumulatively, it is clear that considerable amounts of time have been spent dealing with them and the follow up correspondence.
37. The Council has made the Commissioner aware that it has received six other requests from the complainant on similar issues for the period from June 2015 to November 2016 but has not considered these to be sufficiently closely related to the other 20 requests and has responded to them in line with usual processes.

*The motive of the requestor and value or serious purpose of the request*

38. The two requests which are the subject of this Decision Notice both relate to leaseholder loan application forms for major works/service charges. It appears to the Council that the complainant's motive for making these (and other) requests is a belief that it has acted unlawfully and in a discriminatory manner in relation to the use of section 146 notices and loan applications.
39. The Council believes that the complainant's requests may be an attempt to prove that it has acted incorrectly towards her. However, as already stated above the Council considers the complainant was treated in the same way as all other leaseholders and believes its procedures are correct and legal.
40. The Council is not persuaded that the use of the FOIA is the most appropriate regime for the complainant to pursue her complaint that it acted unlawfully and in a discriminatory manner in relation to Section 146 Notices and leaseholder loan applications. Furthermore, it is not clear how sight of the requested information will support the complainant's belief.
41. The Council therefore has been unable to identify any serious value or purpose to the complainant's requests.

*Harassment or distress of and to staff*

42. Despite the complainant's criticisms of the Council and some of the individuals within it and her intemperate use of language, it does not believe that she has specifically targeted her correspondence against those staff. However, the volume of requests, their frequency and their overlapping nature is causing an unjustified and disproportionate level of disruption.

*Conclusion*

43. In October 2015 the Council made the complainant aware that as she had made a number of requests on the issue of Section 146 notices, leaseholder loans and the use of process servers, it considered that the subject was exhausted and that future requests on these matters might be considered vexatious. Since then, it has sought to rely on Section 14 of the FOIA in respect of 11 requests.
44. Of the requests that the Council has considered to be vexatious (as illustrated in the table above), two have already been looked at by the Commissioner and one has resulted in a Decision Notice upholding the application of Section 14 of the FOIA.
45. Having considered the specific factors and other circumstances relevant to the complainant's requests, the Council is of the view that on balance they are, when considered as part of a wider pattern, vexatious.

### ***The Commissioner's view***

46. The issue for the Commissioner to determine in this case is whether the requests dated 27 April and 14 October 2016 are vexatious. Section 14(1) of the FOIA can only be applied to the request itself and not the individual who submitted it.
47. In reaching a decision in this case, the Commissioner has considered the arguments put forward both by the complainant and the Council.
48. The Commissioner determined that the key question to be considered when weighing up whether these requests are vexatious is whether they were likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
49. In her guidance on dealing with vexatious requests, the Commissioner recognises that the FOIA was designed to give individuals a greater right of access to official information with the intention of making public bodies more transparent and accountable.
50. While most people exercise this right responsibly, she acknowledges that a few may misuse or abuse the FOIA by submitting requests which are intended to be annoying or disruptive or which have a disproportionate impact on a public authority.
51. The Commissioner acknowledges that public authorities must keep in mind that meeting their underlying commitment to transparency and openness may involve absorbing a certain level of disruption and annoyance.
52. The Commissioner also recognises that dealing with unreasonable requests can place a strain on public authorities' resources and get in the way of delivering mainstream services or answering legitimate

requests. Furthermore, these requests can also damage the reputation of the legislation itself.

53. The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal in the case of *Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (AAC), (28 January 2013)*.
54. In weighing the evidence about the impact of the requests dated 27 April and 14 October 2016 on the Council and balancing this against the purpose and value these requests, the Commissioner has taken into account that the complainant considered her requests had a serious purpose and value.
55. Regarding whether the purpose and value of a request justifies the impact on the public authority, the Commissioner's guidance states:

*"The key question to consider is whether the purpose and value of the request provides sufficient grounds to justify the distress, disruption or irritation that would be incurred by complying with that request. This should be judged as objectively as possible. In other words, would a reasonable person think that the purpose and value are enough to justify the impact on the authority"*.
56. Applying this to the requests in question, the Commissioner has decided that the Council was correct to find that they were vexatious. She has balanced the purpose and value of the requests against the detrimental effect on the public authority and is satisfied that they are likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
57. The Commissioner is not persuaded that the FOIA is the appropriate regime to secure the outcome the complainant desires and furthermore is not convinced that the information requested will support her view that the Council acted unlawfully and in a discriminatory manner in relation to the issue of Section 146 Notices and leaseholder loan applications.
58. Accordingly the Commissioner finds that section 14(1) has been applied appropriately in this instance.

## **Right of appeal**

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59. 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)

60. 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.
61. 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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