

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 August 2012

Public Authority: London Borough of Islington
Address: Chief Executive's Office
Town Hall, Room G07
Upper Street
London
N1 2UD

Decision (including any steps ordered)

1. The complainant requested information from the London Borough of Islington ("the council") relating to charges to residents of flats. The council refused to respond to the requests because it considered that they were vexatious under section 14(1) of the Freedom of Information Act 2000 ("the FOIA"), the exclusion relating to vexatious requests.
2. The Commissioner's decision is that the council correctly refused to respond to the requests using section 14(1) of the FOIA.
3. The Commissioner does not require any steps to be taken.

Request and response

Request 1

4. In an information request that was received by the council on 21 November 2011, the complainant requested information in the following terms:

"Please can you provide copies of the time-sheets for the alleged gardening works done at Thornhill Houses in 2010. For at least half of the year the garden was covered in scaffolding, gardening works ceased, gardening staff were not allowed on site, and gardening staff were not seen. How therefore can we have been charged for these works?"

5. The council responded on 16 December 2011 and said that it did not hold the information requested.
6. On 16 December 2011, following the complainant's dissatisfaction with the above, he requested further information from the council in the following terms:

"Please can you provide EVERYTHING that you hold for the gardening for TH for the past SIX years...I cannot believe that HFI can manage to invoice leaseholders for various monthly amounts for gardening works when they have no details of the actual time or costs spent doing the same".

Request 2

7. On 5 December 2011, the complainant requested information from the council in the following terms:

"Please provide copies of ALL written correspondence between ALL parties in connection with these works...To include copies of all invoices...

Please provide in electronic format".

Request 3

8. On 5 December 2011, the complainant requested information from the council in the following terms:

"As we believe HFI incorrectly aggregate leaseholder service charges across the borough, and not by properties listed in the Land Registry title deed [sic] for the dwelling in question, we are trying to ascertain how many properties LBI/HFI manage...

1. *The alleged DJ report shows a total of 7,647 LH dwellings...*
2. *FOI request 37070 indicated that HFI manages 7,808 LH dwellings on LBI's behalf...*
3. *The final DJ invoice was divided by 8,253 LH*
4. *P41 of the DJ contract claims that LBI has 9,497 LH dwellings... Here alone is a discrepancy of 1,850 LH dwellings...*

Does HFI/LBI actually know how many LH and/or dwellings they are responsible for?

Please clearly explain the discrepancy, and how each of the above was calculated and/or obtained from?"

The council's response

9. The council replied on 22 December 2011. The council said that it had decided to refuse to respond to the requests using section 14(1) of the FOIA.
10. The council completed an internal review on 30 January 2012 and said that it wished to maintain its position that the requests were vexatious.

Scope of the case

11. The complainant asked the Commissioner to consider whether the council had correctly applied section 14(1) to his requests.

Reasons for decision

Section 14(1) – Vexatious requests

12. Section 1(1) provides a general right of access to recorded information that is held by public authorities. Section 14(1) of the FOIA states the following:

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

13. Guidance on vexatious requests is available on the Commissioner's website at www.ico.gov.uk and for ease of reference, at the following link:

http://www.ico.gov.uk/for_organisations/guidance_index/~/_media/documents/library/Freedom_of_Information/Detailed_specialist_guides/vexatious_and_repeated_requests.ashx

14. As explained in the guidance, when considering if a request for information is vexatious, the Commissioner will consider the argument and evidence that the complainant and the public authority is able to provide. The Commissioner's analysis will generally focus on the following questions:

- Could the request fairly be seen as obsessive?
- Is the request harassing the authority or causing distress to staff?
- Would complying with the request impose a significant burden in terms of expense and distraction?
- Is the request designed to cause disruption or

- annoyance?
 - Does the request lack any serious purpose or value?
15. It will not be necessary for all of the above criteria to apply but in general, the more that apply, the stronger the case for a vexatious request will be. The Commissioner is able to take into account the history and context of the request.

Could the request fairly be seen as obsessive?

16. When a request for information is refused as vexatious, it is often the case that an examination of the background will reveal a long and difficult relationship between the parties that has arisen as a result of an original dispute. That is clearly the case here.
17. The council explained to the Commissioner that it has received a large number of requests for information from the complainant last year that it considered under the terms of the FOIA, and a number of other related complaints and queries. For clarity, some of those communications involved Homes for Islington, which under the FOIA has been treated as a separate public authority in its own right. From April 2012, the council resumed responsibility for managing housing services and the Commissioner therefore considers that it is appropriate to take this correspondence into account in this case for that reason, and because it clearly involves the same issues.
18. The council said the majority of the communications relate to the management and calculation of service charges for leaseholders. The complainant is a leaseholder of a flat in a building owned by the council and the majority of the requests are focused on this particular building. The complainant believes that the council is overcharging him and other residents for services. He has indicated in correspondence to the council that he considers himself to be acting on behalf of other residents as well as himself.
19. The council explained to the Commissioner that during the course of its frequent interactions with the complainant, the council has considered the requests and complaints made at the highest level. The council and Homes for Islington met personally with the complainant to discuss his concerns. This meeting involved the Chief Executive of Homes for Islington. The council explained that in addition to meeting the complainant and attempting to deal with numerous and sometimes repetitive emails, the council has attempted to offer advice and assistance to the complainant to help him to phrase his requests as clearly as possible and to understand the limits of the information that the council may be able to provide.

20. The council told the Commissioner that despite its best efforts to respond to the complainant's requests, he has continued to bombard the council with emails and requests and is invariably dissatisfied with the response that he receives which is often then escalated to an internal review and then appealed to the Commissioner as a result, or it prompts further requests and complaints. The council made it clear to the Commissioner that the sheer volume and frequency of the communication from the complainant has been very challenging to manage and has reached a level where it could be fairly characterised as obsessive.
21. The Commissioner understands that, amongst other areas of concern, the complainant has made requests in accordance with section 22 of the Landlord and Tenant Act 1985 to inspect documents relating to his service charge accounts. The council provided the complainant with what it believes to be sufficient information, although the complainant disagrees and says that he is unable to properly consider the matter because the council has not provided all the necessary supporting documentation.
22. The council provided the Commissioner with a copy of a letter dated 23 December 2011 showing the outcome of a complaint made by the complainant to the Local Government Ombudsman. In that letter, the Ombudsman explained that leaseholders have a statutory right to seek a summary of the service charge account under section 21 of the Land and Tenant Act 1985. As well as receiving a summary, leaseholders have the right under section 22 of the 1985 Act to inspect documents relating to their service charge account as a follow-up to provide more detail on the summary.
23. The Ombudsman further explained that the work of his office is governed by law, primarily the Local Government Act 1974. This says that the Ombudsman shall not investigate a complaint if a remedy exists by way of a right of appeal to a statutory tribunal. The Leasehold Valuation Tribunal ("the LVT") is a statutory tribunal and provides an accessible and relatively informal way to resolve residential leasehold disputes including disputes and the liability to pay, and the reasonableness of, a service charge. The Ombudsman observed the following:

"It seems to me that [the complainant] is essentially complaining about the level of charges being passed on to him under the terms of his lease. He therefore has a right of appeal to the LVT, which the Ombudsman would normally expect him to use.

[The complainant] says the council has failed to provide sufficient information for him to challenge the charges at the LVT, but I do not

share that view. The LVT's powers to determine the reasonableness of charge are not dependent on whether or the council has discharged its duties under section 22 of the Landlord and Tenant Act 1985. As part of any proceedings, the LVT will set directions regarding what information is to be provided by the landlord in relation to the service charges in order for it to determine to what extent the charge is reasonable and payable".

24. Furthermore, it was apparent to the Commissioner that to the extent that the complainant was unhappy with any refusal to provide documentation, he had the option to exercise his right of appeal to the Commissioner under section 50 of the FOIA and indeed, he has done so on a number of occasions. In view of the above, the Commissioner did not consider that it was apparent that the complainant had suffered an injustice in the way this matter had been handled that may have justified the continued pursuit of information about charges in this manner. Furthermore, it does not justify the very wide scope, volume and frequency of the requests that have been made.
25. Having considered the bundle of evidence provided by the council, the Commissioner was persuaded that the complainant's approach to the issue had been out of proportion when there were more reasonable steps he could have taken to resolve the issues. The Commissioner formed the view that the complainant had been pursuing a campaign against the council, as a result of his personal grievance over service charges, and this had developed progressively into a desire to challenge persistently the charges made to residents for various activities more generally in a very wide-ranging manner. There was evidence that if the complainant was not satisfied with a response, he would use the approach of making an even more wide-ranging request the next time rather than focusing on resolving the issues he has already raised. The Commissioner was satisfied on the face of the evidence presented that it would be reasonable for the council to characterise the latest requests as forming part of this obsessive campaign.

Did the request have the effect of harassing the council?

26. The Commissioner would like to highlight that this element of the criteria is concerned with the effect of the request on any reasonable public authority, rather than what the complainant's intention was. It is not uncommon in relation to vexatious requests for the requester to have a genuine conviction that the request was a reasonable one.
27. There is some overlap between the Commissioner's vexatious criteria and the same factors relevant to the consideration of whether the request is obsessive as described above apply to whether the request is harassing.

28. In addition, the Commissioner has noted that the complainant has questioned the honesty, integrity and professionalism of various individuals in a number of items of correspondence. His tone is on occasion accusatory. In an email on 13 December 2011, the complainant said the following:

"I am drawn to the only conclusion possible: that this is no more than an orchestrated exercise to deny leaseholders and Council Tax payers access to information that should be readily available under the Landlord and Tenant Act as part of open transparent government..."

As I emailed before, I am unsure just how much you actually know of what is really going on...You may of course be full [sic] aware of the real reasons and therefore part to [sic], you may not...

Either way, you based your letter entirely upon misinformation provided to you by those who do not wish their questionable antics disclosed...Nothing else...Which is hardly professional or independent".

29. It is clear to the Commissioner that the council made a number of attempts to draw to the complainant's attention that it was concerned about the on-going nature of the correspondence and the effect that this was having on its staff. In a letter dated 6 December 2011, the council wrote to the complainant in the following terms:

"Since February 2011 we have dealt with 55 Freedom of Information requests, 13 Internal Reviews flowing from your dissatisfaction with our responses to these requests, and you have, in addition, escalated a number of these (7) to the Information Commissioner's Office. In addition to this structured record of information requests, there is also a deluge of emails and interactions from you that are complex and vary between statements, criticism and conjecture".

In the letter, the council set out the details of the large number of requests and complaints that it was currently considering from the complainant at that time. It added,

"It is of extreme concern to me that my team are at such a point of exhaustion and distress relating to their interactions with you. It is therefore vital that we work together to ensure that the way forward is a reasonable one for all concerned so that it is sustainable. For any email or other correspondence we will be considering the entire context and history of all your requests and complaints. Where these are legitimate requests for information we will record these as such.

It would assist us if you considered the impact and nature of your requests against the backdrop of this letter to you. I am also very happy

to meet up with you face to face, since this is often a good way of resolving issues and clarifying things that are difficult to do in writing.

I hope that you understand the reasons for writing this letter to you and I hope that we can work together to get you the information you are entitled to".

30. However, it was not apparent to the Commissioner that the council's expression of concern impacted significantly on the complainant's behaviour and approach to these issues. The failure to recognise and understand the impact of this behaviour and consider modifying it is, in the Commissioner's view, further evidence of the harassing nature of this voluminous correspondence.
31. The Commissioner considers that it would be reasonable for the council's staff to regard further requests and correspondence on the same topic from the complainant as harassing when there was every indication that responding would only lead to further requests, enquiries and complaints given the nature of previous engagement. It is clear from the nature of the correspondence seen by the Commissioner that there was no likelihood that the council and the complainant were going to be able to resolve to their mutual satisfaction the issues being raised regarding charges to residents. The Commissioner also considered that the complainant's general tone and manner had contributed to the harassing effect of the correspondence in this case.

Would the request impose a significant burden in terms of expense and distraction?

32. The Commissioner does not doubt that compliance with the requests would impose a significant burden when their complete context is taken into account. It is clear to the Commissioner that the complainant's request and correspondence would have imposed a substantial burden on public resources.

Is the request designed to cause disruption or annoyance?

33. The Commissioner considers that this part of the vexatious criteria is difficult to prove because it requires objective evidence that it was the complainant's intention to cause disruption or annoyance. The Commissioner did not consider that the council provided sufficiently strong evidence to show that this was the case. It is clear to the Commissioner that the complainant genuinely believes that he is acting in the public interest.

Does the request have no serious purpose or value?

34. While the Commissioner was not persuaded that it could be said that these requests had no serious purpose, the value of responding is limited in view of the background to this matter and the fact that there is an alternative route available by which the complainant may pursue concerns over charges.

Was the request vexatious overall?

35. Taking into account all the circumstances of the case, the Commissioner considers that a strong case and body of evidence had been presented to the Commissioner to demonstrate that the requests were vexatious. While the Commissioner considers that the complainant may have begun seeking information for a serious purpose, there comes a point when the action being taken and the associated burden being imposed on the authority is disproportionate to whatever objective the complainant is attempting to achieve. That point has been reached in this case.

Right of appeal

36. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

37. 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.
38. 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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