

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

### **Decision notice**

**Date:** 30 June 2015

**Public Authority:** Gravesham Borough Council  
**Address:** Civic Centre  
Windmill Street  
Gravesend  
Kent  
DA12 1AU

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

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1. The complainant has requested various items of information regarding summonses to the Magistrates Court in relation to Council Tax over a specified period. Gravesham Borough Council refused the request by virtue of section 14(1) of the FOIA on the grounds that it was vexatious.
2. The Commissioner has considered the representations made to him by Gravesham Borough Council and has decided that it has incorrectly applied section 14(1) of the FOIA to the complainant's request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - The Council should disclose to the complainant any recorded information it holds which is relevant to his request, or it should issue a new refusal notice which is compliant with the provisions of section 17 of the FOIA.
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 28 August 2014 the complainant wrote to the Council and requested the following information:

*"Under the auspices of the FOI Act please could you supply the following information.*

*In the financial accounting year 2007/2008 and subsequent years up to 28/08/13.*

*1 The names, dates and property addresses of summonses at the Magistrates Court instituted by the Gravesham Borough Council for Council Tax where statutory written procedures under S1 613 to ascertain liability had been followed.*

*2 The names, dates and property addresses of summonses at the Magistrates Court instituted by the Gravesham Borough Council for Council Tax where there was no accepted liability and neither statutory written procedures under S1 613 nor any other written ascribable evidence was obtained by the Council to first ascertain liability.*

*3 The number of cases in which owners were billed for Council Tax where liability had previously not been with the owner and no statutory requisitions for information had been sent to them nor any written ascribable evidence obtained to legally determine the owner's liability before bills were sent to them...."*

6. The Council responded on 19 September 2014. It stated that it was refusing the request under section 14(1) of the FOIA on the basis that the request was vexatious.
7. Following an internal review the Council wrote to the complainant on 7 October 2014. It stated that:

*"...having looked at the wider context of your request, in particular your case relating to Council Tax liability at [named property and address], I am of the opinion that your request is unjustified, inappropriate and an improper use of the Freedom of Information Act (FOIA). I therefore uphold the original refusal under section 14(1) ...on the basis that...your request is vexatious."*

## Scope of the case

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8. The complainant contacted the Commissioner on 2 January 2015 to complain about the way his request for information had been handled.

He provided background information regarding the legal process for ascertaining liability for Council Tax and stated that:

*"There was nothing 'vexatious' in the Council requesting information from us for a period 2007 to 2013 – it was their legal right...We are only asking for information over a similar period.*

*...far from vexatious it is a proper process of law which enables secret malpractices of Public bodies to be exposed."*

9. It is beyond the scope of the Commissioner's powers to investigate or comment on the general conduct of a public authority. This notice will therefore solely consider whether the Council has correctly applied section 14(1) of the FOIA.

## **Reasons for decision**

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### **Section 14(1) - Vexatious requests**

10. 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.
11. The term 'vexatious' is not defined in the FOIA, however, the Upper Tribunal in the Information Commissioner vs Devon CC and Dransfield [2012] UKUT 440(AAC), (28 January 2013) took the view that the ordinary dictionary definition of the word 'vexatious' is only of limited use, because the question of whether a request is vexatious ultimately depends on the circumstances surrounding that request.
12. In further exploring the role played by circumstances and whether the request has adequate and proper justification, the Tribunal concluded that 'vexatious' could be defined as the *"...manifestly unjustified, inappropriate or improper use of a formal procedure."* (paragraph 27)
13. Consistent with the Upper Tribunal's decision which established the concepts of 'proportionality' and 'justification' as central to any consideration of whether a request is vexatious, the Commissioner's guidance for section 14 confirms that the key question to ask when weighing up whether a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
14. Where this not clear, the public authority should weigh the impact on the authority of complying with the request and balance this against the purpose and value of the request. In doing this, public authorities will

inevitably need to take into account the wider factors such the background and history of the request.

15. The Commissioner notes that the Council stated in its refusal notice to the complainant that it considered his request vexatious on the grounds that having reviewed the history of communications between the two parties, that it appeared that his requested was intended to be disruptive to the Council's duties under the Local Government Finance Act 1992, and that it lacks any value or purpose. It therefore informed the complainant that it viewed the request as an unjustified, inappropriate and improper use of a formal procedure, namely the FOIA, and would not process it any further. This stance was maintained at the internal review.
16. As part of his investigation, the Commissioner therefore requested further information and supporting evidence from the Council.
17. The Council provided details to the Commissioner of the context and history behind the request. It informed him that the request emanated from a long and complex case extending over a period in excess of seven years regarding a particular property owned by the complainant, involving several departments and regarding two issues running side by side. The first involved the Council's Empty Properties Team, whilst the second was in relation to a dispute over Council Tax liability.
18. The Council further argued that the complainant has persistently made attempts to be disruptive to it fulfilling its duties, and does not adhere to due process. It further claimed that he makes threats to complain to monitoring bodies such as the ICO or the Local Government Ombudsman ('the LGO') which are not followed through.
19. The Council has maintained to the Commissioner that it has previously gone out of its way to address the complainant's concerns about possible maladministration and considers that a large amount of public resource has unnecessarily been wasted on this particular case due to the alleged refusal of the complainant to follow procedures, and his attacks on how officers carry out their duties. It further argued that the voluminous correspondence with the complainant regarding the two issues was causing an unjustified level of disruption, irritation and distress to Council officers.
20. With regard to the Council Tax issue, the Council informed the Commissioner that at the time of receiving the request, it was awaiting a hearing at the Valuation Tribunal in connection with Council Tax liability on the complainant's property. The Council further informed the Commissioner that it was its belief that it was the complainant's

intention to convince the Valuation Tribunal that the Council was acting unlawfully as the complainant had stated:

*"The information is required because we consider the Council could be in breach of its legal remit."*

21. The Council forwarded the complainant's claim to the Monitoring Officer where it was addressed using its formal procedure for investigating complaints.
22. As part of the Council's arguments and evidence in support of its reliance on section 14(1) of the FOIA, the Council referred to three previous FOIA requests for information regarding the issue of Council Tax, two complaints to the Council regarding maladministration, the complaint to the Valuation Tribunal regarding the complainant's liability for Council Tax, and correspondence to its Chief Executive post the Valuation Tribunal decision.
23. The Commissioner would point out that his investigation must focus on the situation at the time of the request. Any evidence provided which post-dates the request cannot therefore be taken into consideration.
24. Having considered the evidence provided by the Council, the Commissioner notes that only two of the requests provided as supporting evidence preceded this request, and these were in relation to the section 215 issue as opposed to the Council Tax issue. Whilst the third request was in relation to Council Tax, the Commissioner notes that it post-dates this request.
25. The Commissioner has also considered the two internal complaints to the Council regarding maladministration. The Commissioner notes that the first complaint appears to be in relation to the section 215 issue and pre-dates the request. The complainant appears to have exhausted all three stages of the Council's internal complaints process with his complaint not being upheld at each stage. The Commissioner also notes that although the complainant informed the Council that he intended to complain to the LGO, that he did not appear to follow this complaint up.
26. The second internal complaint was contained in the complainant's request for an internal review to his request subject to this notice, and therefore post-dates his request for information.
27. The Commissioner also notes that the decision from the Valuation Tribunal, whilst dismissing the complaint, is dated 8 December 2014, yet the request was dated 28 August 2014. The decision therefore post-dates the request. Similarly, the correspondence from the complainant to the Council's Chief Executive post the Valuation Tribunal decision cannot be taken into consideration.

28. In summary therefore, although the Commissioner acknowledges that the two parties have engaged in lengthy correspondence over a period of many years over two issues relating to the same property, the only evidence he can take into consideration is the complaint regarding the section 215 issue, and although the complainant exhausted the three stages of the Council's complaints procedure, he does not consider that it constitutes sufficient evidence to justify the Council's reliance on section 14(1). He has therefore concluded that the Council incorrectly relied on section 14(1) of the FOIA to refuse this request on the basis that it was vexatious.
29. The Commissioner does however note that the complainant's continued correspondence to the Chief Executive of the Council and further FOIA requests after the Valuation Tribunal had reached its decision is a matter that might be taken into consideration in any subsequent consideration. and may suggest that a similar request at this point in time maybe more likely to justify a refusal on the basis of section 14(1) of the FOIA than in August 2014.

## Right of appeal

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30. 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)

31. 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.
32. 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**