

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

### **Decision notice**

**Date:** 20 July 2016

**Public Authority:** The Charity Commission for Northern Ireland  
**Address:** 257 Lough Road  
Lurgan  
Craigavon  
BT66 6NQ

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

---

1. The complainant has requested information relating to meetings between the Charity Commission for Northern Ireland ("CCNI") and the Board of Lough Neagh Rescue.
2. The Commissioner's decision is that the CCNI has correctly applied section 14(1) of the FOIA to the complainant's request.
3. The Commissioner therefore requires no steps to be taken.

#### **Background**

4. Over a 3 year period, from January 2012 to January 2015, the CCNI conducted a substantial statutory inquiry into the governance and administration of the charity LNR (Lough Neagh Rescue Ltd). During its investigation, the CCNI identified an ongoing internal dispute between 2 distinct groups of members within the charity. This dispute had been exacerbated by historic poor record-keeping and a lack of compliance or adherence to the charity's articles of association and/or company and charity law. This necessitated the investigation being escalated to a statutory inquiry, the CCNI's highest level of investigation, on 3 May 2013. Throughout the CCNI's investigation, parties to one side of the internal dispute have been in frequent and extensive correspondence with the CCNI, including making requests for information and copying the CCNI into correspondence with other organisations and individuals.

## Request and response

---

5. On 28 August 2015, the complainant wrote to the CCNI and requested information in the following terms:

"Please supply to me any agreed minutes, or notes of meetings you may have had with the Board of Lough Neagh Rescue. These will be meetings subsequent to March 2013 to August 2015.

"Specifically these meetings may reference or acknowledge the exclusion or absence of a legally elected member of the board."

6. The CCNI responded on 25 September 2015. It stated that it was applying section 14(1) of the FOIA to the complainant's request.
7. Following an internal review the CCNI wrote to the complainant on 23 October 2015. It stated that the reviewer was upholding the original decision.

## Scope of the case

---

8. The complainant contacted the Commissioner on 24 October 2015 to complain about the way her request for information had been handled.
9. The Commissioner has considered the CCNI's application of section 14(1) to the complainant's request.

## Reasons for decision

---

10. Section 14(1) 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. 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> 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

---

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

concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.

12. 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.
13. 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).
14. 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.
15. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in his 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.

## **The CCNI's position**

### **Does the request impose a significant burden on the CCNI in terms of both expense and distraction?**

16. The CCNI has informed the Commissioner that the majority of information relating to LNR is stored electronically on TRIM, which is searchable by title rather than document content, necessitating a

---

<sup>2</sup>[http://ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/dealing-with-vexatious-requests.ashx](http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx)

complete search of the content of each document in order to ascertain whether it contained information relevant to the request. A search of TRIM found that there were 2583 relevant documents within the "enquiries" department alone, which would have necessitated an estimated 43 hours of search time. Information relating to LNR would also have to be searched for in other departments such as Legal and Monitoring and Compliance. The CCNI calculated that, given the estimated hours, the cost of searching the documents within the enquiries department alone would amount to a cost of £1,075, which goes well beyond the cost limit of £450 as set out in section 4(4) of the Freedom of Information (Appropriate Limit and Fees Regulations) 2004.

17. The CCNI is a small organisation, working to implement a number of new regulatory processes relating to charities. It has informed the Commissioner that fulfilment of the request would require the CCNI to expend disproportionate resources on searching for information relating to an inquiry which has already been extremely lengthy, complex and time-consuming.
18. In addition, the CCNI's previous experience of dealing with requests from parties to this particular side of the dispute is that the requestors are rarely satisfied with any response received. Therefore, it is the CCNI's view that the sheer volume of information to be searched would mean that complying with the request would impose a significant and unjustified burden upon the CCNI's limited resources in terms of both expense and distraction.

**Does the request have any serious purpose or value?**

19. Given the serious nature of the investigation, and the public interest in the charity LNR, the CCNI understands that there may be some value in disclosing the information.
20. However the information requested is very specific, personal and related to a small element of a wide and complex investigation. Disclosure of the requested information may provide the public with some further information on the case, however, in the CCNI's view there would be little wider benefit to the public.

21. Furthermore, the request is raising issues in relation to membership of LNR which have already been fully considered by the CCNI<sup>3</sup> and the Charity Tribunal<sup>4</sup>.

**Is the request designed to cause disruption and annoyance?**

22. The requestor is a member of an organisation known as Probity AAC NI. The CCNI has explained to the Commissioner that, in November 2013, a large volume of information (three lever arch files) related to the CCNI's investigation into LNR was released to an individual who is shown on Probity AAC NI's website as being an advocate for that organisation. The CCNI therefore considers that it is reasonable to believe that this large volume of information is already available to the current requestor.
23. The CCNI also states that the request is one of a series of several FOI requests submitted by the requestor to the CCNI during the period 31 July 2015 and 10 September 2015. A further two requests were submitted by her in February and March 2016. At the same time, the CCNI also received three FOI requests from the aforementioned individual who is an advocate for Probity AAC NI.
24. The CCNI continues to receive enquiries and communications from parties involved in this side of the dispute in relation to its investigation into LNR, as well as correspondence regarding matters unrelated to LNR.
25. As a public authority, the CCNI expects a certain level of interest in its investigatory and compliance work. However, the breadth and scope of the communications from the same connected individuals is considered by the CCNI to be an ongoing and concerted attempt to disrupt its work and place an undue burden upon its limited resources.

**Does the request have the effect of harassing the CCNI?**

---

26. The request is one of a series of several separate FOI requests submitted by the requestor over the period July 2015 to March 2016.
- 

<sup>3</sup> <http://www.charitycommissionni.org.uk/concerns-and-decisions/statutory-inquiry-reports>

<sup>4</sup> [http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/Charity\\_Tribunal/Decisions/Documents/decision\\_010714-j cht\\_LNR-decision\\_010714.htm](http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/Charity_Tribunal/Decisions/Documents/decision_010714-j cht_LNR-decision_010714.htm)

These requests all focus on the CCNI's investigatory and compliance work.

27. The CCNI is particularly concerned by the wording within the request inferring that the CCNI may have been aware of information relating to "the exclusion or absence of a legally elected member of the board" of LNR.
28. The CCNI has informed the Commissioner that it views this as a serious allegation, which has had the effect of causing distress to the CCNI's staff, as it, in the CCNI's view, attempts to cast aspersions on the reputation and work of the CCNI and its staff.

**It can otherwise fairly be characterised as obsessive or manifestly unreasonable**

29. The CCNI is aware of the gravity of the subject matter from which the request has arisen, as well as the emotive nature of the issues raised during the investigation. As such, the CCNI did anticipate receiving a number of direct enquiries and concerns during this period and indeed responded to a number of direct communications, press queries and requests for information.
30. The issues raised within this request are likely to be seen by the requestor as critical matters which require attention. However, the CCNI has fully dealt with all matters relating to the LNR during its investigation, which culminated in the publication of a statutory inquiry report on 20 January 2015. These matters have also been dealt with by the Charity Tribunal (see paragraph 21 above).
31. The CCNI therefore considers that the persistent nature of correspondence from one side of the dispute, including the current request, is an attempt to contribute to an aggregated burden on the CCNI and to re-open matters which have already been fully dealt with using the correct legal processes.

**The Commissioner's view**

32. The Commissioner is aware that, as per his guidance, there are many different reasons why a request may be considered vexatious. Whilst there are no specific or prescriptive rules as to what makes a request vexatious, there are generally typical characteristics and circumstances which make it easier to determine whether or not a particular request is vexatious. A request does not necessarily have to be about the same issue as previous requests in order to make it vexatious, however the request may be connected to others by a broad or narrow theme. A common feature of such requests is that they can emanate from a perceived wrongdoing on the part of a public authority.

33. The Commissioner's approach is to assess whether the level of disruption, irritation or distress caused to the authority by the request is disproportionate or unjustified, when weighed against the purpose and value of the request. When making the assessment, he has also taken into account the context and history of the request, i.e. the wider circumstances surrounding the request.
34. The Commissioner notes that the CCNI has already expended a great deal of time and staff resources in carrying out a lengthy and complex statutory inquiry into the charity LNR, also in handling, responding to and logging the extensive and ongoing communications received throughout, and after the conclusion of, the inquiry.
35. The Commissioner also considers that, given the length of time that the complainant and others involved in a particular side of the charity dispute have been corresponding with the CCNI about these matters, and the fact that their correspondence has been extensive and frequent in its scope, it is reasonable to conclude that the complainant will continue to submit requests, and/or maintain contact about the subject matter regardless of any response provided to the request in question. The Commissioner is therefore satisfied that, in the context of the CCNI's previous and ongoing dealings with the complainant, it is likely that compliance with these requests would generate additional requests. This would, in turn, result in a disproportionate burden on its resources.
36. After having considered all the circumstances of this case, the Commissioner has concluded that the frequent and repetitive nature of the complainant's correspondence with the CCNI regarding the same topic has imposed an unreasonable burden upon the CCNI's resources. The Commissioner has therefore concluded that the CCNI is entitled to characterise the request as vexatious and was correct in its application of section 14(1) of the FOIA.

## Right of appeal

---

37. 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)

38. 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.
39. 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 .....**

**Deirdre Collins**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**