

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

### **Decision notice**

**Date:** 11 September 2018

**Public Authority:** Wealden District Council  
**Address:** Council Offices  
Vicarage Lane  
Hailsham  
BN27 2AX

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

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1. The complainant has requested information from Wealden District Council which relates to an Excess Charge Notice – ECN102515, received on 8 August 2016. The Council has refused to comply with the complainant's request in reliance on section 14(1) of the FOIA, on the grounds that the request is vexatious.
2. The Commissioner's decision is that Wealden District Council has correctly applied the exemption provided by section 14(1) of the FOIA to the complainant's request.
3. The Commissioner requires the public authority to take no further action in this matter.

#### **Request and response**

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4. On 14 November 2017, the complainant wrote to Wealden District Council and requested information in the following terms:

"Under the Freedom of Information Act I would like to know the answers to the following points.

1. I would like to know the identification number of the car park attendant that issued the ticket to me numbered ECN102515 at 14:25pm on 08/08/2016.

2. I would like to know if the same CPA filled in the car parking map attached, timed at 11.20am and 14.30pm on 08/08/2016 and, if not, the CPA's identification number who did.
3. I would like an explanation as to how this map can cover two different car park visits that are three hours and ten minutes apart. Cars parked at 11.30am should have gone by 14.30pm. Therefore I can't understand how one map can cover two events. Please would you be good enough to enlighten me?
4. Finally, please could you explain to me how I could have been booked for this offence when the car park map for this period (which is supposed to be an accurate record of events) shows the same two spaces that I was alleged to have occupied, having *nothing* parked on them during the three+ hours that covered the time I was supposed to have been there?"

NB: The Commissioner has numbered the different elements of the complainant's request for convenience of referral.

5. The Council responded to the complainant's request on 21 November 2017. The Council referred the complainant to a decision notice issued by the Information Commissioner on 20 November 2017,<sup>1</sup> which upheld the Council's position that it had disclosed all relevant information in its response to his request for a copy of "... *the plan [...] which details the visit the parking attendant made to the car park at the time of booking me*".
6. The Council noted that the correspondence and communications between the complainant and the Council have been "long and exhaustive", and that this matter has now reached a conclusion. The Council advised the complainant that it would no longer communicate with him further.
7. The complainant wrote back to the Council also on 21 November 2017. The complainant pointed out that he has requested the identification numbers of the car park attendant(s) that were responsible for booking him and filling in the "car park map". The complainant stated that he hadn't previously asked for this information before and he had only asked for the name of the attendant that booked him which the Council had declined to supply.

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<sup>1</sup> ICO case reference FS50669332

8. In respect of his question 3, the complainant said that his request was to understand how one car park map covers two different time spans and he asserted that "there must be an information manual to inform CPAs how to carry out their duties". He also said that, "it is a perfectly reasonable question to ask why a map covering the time that I was booked shows no-one parked in the spaces that I was supposed to have occupied. He asserted that the map is incorrect and said that he would like to know the reason why.
9. On 24 January 2018, the complainant wrote to the Council again. The complainant's email contained assertions concerning each element of his request.
10. With regard to questions 1 and 2, the complainant said, "This must have been recorded on the council's files so must be held in recorded form".
11. With regard to question 3, the complainant said, "This must have been recorded on the council's files so must be held in recorded form. It must also be laid down in some form of instruction manual as to how a car park attendant should carry out his duties".
12. With regard to his question 4, the complainant said, "This must have been recorded on the council's files so must be held in recorded form. To understand how the system works I would like to see the part of the parking training /instruction manual where it says that it is acceptable to issue a parking ticket to a member of the public when a car park plan covering the date and time I was booked shows me no vehicle being parked in the spaces where I was supposed to have been parked".
13. Acting on the advice of one of the Information Commissioner's representatives, the complainant wrote to the Council to ask for an internal review.
14. On 7 March the Council wrote to the Commissioner to explain its position in respect of the complaint raised by the complainant. The Council's letter outlined how it had responded to four information requests submitted by the complainant since September 2016 – referenced FOI 5100, FOI 5115, FOI 5204 and FOI 5259 (the substantive request of this notice).
15. The Council's letter stated that, "In addition to the formal exchanges of correspondence [...], it would be fair to say that there has been exhaustive and unreasonable amounts of correspondence received by (sic) the complainant, all in relation to this specific matter and all of which have been responded to by the Council". The Council asserted that the complainant had received answers to all his questions which were raised within the email exchanges, meetings and telephone calls

between himself and numerous members of staff dating back to August 2016.

16. The Council said that the complainant's request of 21 November 2017 was "asking questions that had previously been requested and duly responded to", and that his new request; "did not ask anything different or in addition to what had been contained with our previous correspondence". The Council finally drew the Commissioner's attention to its letter which advised the complainant that it would not communicate with him regarding this matter anymore.

### **Scope of the case**

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17. The complainant contacted the Commissioner on 19 December 2017 to complain about the way his request for information had been handled.
18. The Commissioner initially investigated whether the Council has handled the complainant's request in accordance with the FOIA. She sought to determine whether the Council holds recorded information relevant to the complainant's request and whether that information should have been disclosed to him under the provisions of the FOIA. However, subsequent to making her enquiry, the Council informed the Commissioner that it was relying on section 14(1) of the FOIA as its grounds for not complying with the complainant's request. This notice constitutes the Commissioner's decision in respect of the Council's application of section 14(1).

### **Reasons for decision**

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19. The Council has confirmed to the Commissioner that it is relying on section 14(1) of the FOIA as its grounds for refusing to comply with the complainant's request. For the avoidance of doubt, the Council considers the complainant's request to vexatious in its entirety.
20. Notwithstanding its application of section 14(1), the Council has advised the Commissioner that, at the time the complainant was issued with his parking ticket, Community Officers were not issued with identification numbers.
21. In its letter of 12 September 2017, the Council informed the complainant that it would be revisiting this policy to determine whether it would be appropriate for its Community Officers with public facing roles to have a unique officer number.

22. Following the Council's review Community Officers were issued with identification numbers.
23. For the avoidance of doubt, the Commissioner finds the Council's explanation to be plausible and persuasive and she accepts that, on the balance of probabilities, the Council did not hold the information requested by the complainant at part 1 of his request.

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

24. Under Section 14(1) of FOIA a public authority is not obliged to comply with a request for information where the request is vexatious. The exemption provided by section 14(1) is not subject to consideration of the public interest test.
25. The term 'vexatious' is not defined in the Freedom of Information Act and therefore the Commissioner has adopted the Upper Tribunal's approach taken in *Information Commissioner v Devon County Council & Dransfield*.<sup>2</sup>
26. In the Dransfield case the Upper Tribunal defined a vexatious request as, the "...manifestly unjustified, inappropriate or improper use of a formal procedure" and in making this decision the Tribunal determined that the concepts of 'proportionality' and 'justification' should be central to any consideration of whether a request is vexatious.
27. The Upper Tribunal found it was 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 and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) and harassment or distress of and to staff.
28. The Tribunal stressed that these considerations were not exhaustive and therefore it is important to adopt an 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).
29. Following the approach taken by the Upper Tribunal, the Commissioner needs to consider whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to its serious purpose and value.

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<sup>2</sup> UKUT 440 (AAC) (28 January 2013) paragraph 27

30. In the Commissioner's opinion a balancing exercise is required which weighs the impact of the request on the Council against its purpose and value. To assist in this exercise, the Commissioner has identified a number of "indicators" which she has set out in her published guidance<sup>3</sup> on the application of section 14(1). The fact that a request contains one or more of these indicators will not necessarily determine that it is vexatious, as all the circumstances associated with the request will need to be considered in making a judgement as to whether the request is vexatious.
31. The Council has advised the Commissioner that it has considered the complainant's request in the context and history of his other requests for information. These have all been associated with the issuing to the complainant of a parking ticket. In the Council's opinion, the complainant's request is intended to be annoying and disruptive.
32. The Council says that numerous of its officers have spent a disproportionate and unjustified amount of time in dealing with the complainant's requests, which have involved dealing with meetings, visits, telephone calls and in particular the complainant's emails about issues relating to ticket ECN102515 and his previous requests under the FOIA.
33. The Council believes the complainant's request is a continuance of a pattern of behaviour where the complainant is abusing the FOIA by submitting requests which are intended to be annoying and disruptive. This is particularly so in this case where the questions posed by the complainant have been previously answered.
34. The Council asserts that any response made to the complainant would only serve to continue and escalate the intrusive communication.
35. In respect of parts 1 and 2 of the complainant's request, the Council maintains its position that this information was not held at the time the request was received. Nevertheless, the Council has told the Commissioner that "given the actions of [the complainant] in the past, the Council would have concerns over the safety and welfare of its officer". This is because the Council considers the complainant to have a vendetta against the Council and its officer.
36. Had the Council held the information requested in parts 1 and 2 of the complainant's request, the Council says that it would not disclose the

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<sup>3</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

information to the complainant as to do so would likely endanger the safety of the community officer.

37. In respect of part 3 of the complainant's request, the Council has referred the Commissioner to her decision in case FS50669332 and to its previous responses to the complainant's request for "a copy of the plan [...] which details the visit the parking attendant made to the car park at the time of booking me".
38. The Council maintains that it made clear to the complainant that the map was not used for identifying the times when Excess Charge Notices are issued, and the time on the plan only relates to the time the Community Officer entered the car park.
39. The times on the plans are used to assess overstaying in a car park and it has no relevance to vehicles which are not parked wholly within a parking bay, which is the case in respect of the Excess Charge Notice issued to the complainant<sup>4</sup>.
40. On 12 December 2016, the Council advised the complainant that it would not respond to any further requests for information regarding Excess Charge Notice or the circumstances surrounding its issue.
41. Disregarding the Council's position, the complainant continued to correspond and call the Council and he went on to make a complaint to the Local Government Ombudsman and to submit a complaint to the Information Commissioner.
42. In November 2017, the Council reminded the complainant that his requests for information about this matter had been deemed vexatious and that it would not answer any further questions.
43. The Council has confirmed to the Commissioner that it does hold a procedure note for new trainees, and would, in normal circumstances, consider releasing it<sup>5</sup>. In this case however the Council's experience is that such a disclosure would not satisfy the complainant and would serve only to fuel his vexatious behaviour in relation to this matter.
44. From its past dealings with the complainant, the Council says that disclosing the procedure note for new trainees would "only reignite the inappropriate behaviour in relation to this matter".

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<sup>4</sup> The Council provided the Commissioner with a copy of a photograph of the complainant's vehicle to illustrate the parking infringement.

<sup>5</sup> See paragraph 13 of this notice



45. The Council points out that the complainant paid the charge nearly two years ago and that he was advised he could appeal the charge at the Magistrates Court if he disagreed with its issue.
46. The Local Government Ombudsman's decision substantiates the right of the complainant to appeal the validity of an Excess Charge Notice at a Magistrates Court<sup>6</sup>. That Ombudsman found no fault by the Council when it considered the complainant's representations about the Excess Charge Notice.
47. On 21 November 2017, the Council advised the complainant that –  

“Given the level of time that has been dedicated to this matter, the Council has come to the difficult decision of having to advise you that we will no longer communicate any further with you in relation to the issues we consider to be resolved, such as the parking ticket, the completed freedom of information requests and any complaints we have previously responded to. Should you continue to contact us about any of these matters, we will not respond.”
48. To substantiate its application of section 14(1), the Council provided the Commissioner with a chronology of dates when it received and responded to the complainant's requests and complainants relating to the issuing of the excess Charge Notice. The Council's chronology covers the period 28 August 2016 to 11 June 2018 and refers to four requests for information under references FOI 5100, FOI 5115, FOI 5204 and FOI 5259 – the request considered in this notice. In addition to these requests the chronology includes the complaints raised with the Local Government Ombudsman and with the Information Commissioner in case FS50669332.
49. The Council advised the Commissioner that its chronology omits reference to the complainant's other correspondence, which it describes as being “exhaustive and unreasonable amounts of communication”, all in relation to the issuing of the Excess Charge Notice. The Council advised the Commissioner that all of the complainant's correspondence had been responded to by its officers.
50. In summary, the Council asserts that the complainant has received answers to all his questions, which he has raised within emails, at meetings and in his telephones with the Council's staff. The Council

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<sup>6</sup> Local Government Act 1974, section 26(6)(c)



says that, in this case, the complainant's request is asking questions relating to his previous requests which had duly been responded to.

51. In this request, the complainant did not ask for anything different or in addition to what had been contained within the Council's previous correspondence. The Council's letter to the complainant of 21 November 2017 advised him that the Council would not communicate regarding this matter anymore as nothing further could be gained by continuing that dialogue.
52. The Council's previous correspondence with the complainant has demonstrated to the Council that the more it responds, the more questions it will generate from him. The Council considers that its position following its receipt of the complainant's request of 14 November 2017 is justified because of the impact his requests have had on the Council. The Council considers that the complainant's request serves no real purpose other than to cause a nuisance to the Authority.

*The Commissioner's decision*

53. The Commissioner has considered the Council's representations made in support of its application of section 14(1) to the complainant's request of 14 November 2017. The Commissioner has seen no evidence which suggests that the Council's representations are inaccurate or made in bad faith.
54. It is clear to the Commissioner that the complainant's request is one of a series of requests which concerns the issuing of ECN102515, where the complainant is seeking information which supports his grounds for mitigation.
55. In making his requests, the complainant appears to have lost sight of the effect they have had on the Council: They have become wholly burdensome and disproportionate to the purpose the complainant seeks to achieve.
56. It is right that the complainant's request of 14 November is considered together with those he made previously. The burden imposed by those requests is clearly significant and cannot be ignored.
57. Likewise, the Commissioner cannot ignore the tangible annoyance and disruption experienced by the Council in respect of those requests. She acknowledges the fact that the Council has previously responded to the complainant's requests and correspondence and she too considers that the complainant is unlikely to be satisfied with any information he receives from the Council unless it agrees with and supports his own

position. This is evidenced by the unwillingness of the complainant to accept the Council's explanation with regards its Community Officers not having identification numbers at the time he made is request.

58. A point has certainly been reached when any reasonable person would conclude 'enough is enough': He or she would expect that a line is drawn under this matter, particularly where a formal procedure exists for appealing an Excess Charge Notice, which is made available by statute and where the complainant had been made aware of that procedure.
59. The Commissioner is obliged to point out that the information which the complainant seeks is of very limited value to the wider public: It relates solely to the complainant's own issue. This must surely be a factor in the Commissioner's decision.
60. The Commissioner has decided that the Council has correctly applied section 14(1) of the FOIA to the complainant's request of 14 November 2017. She finds that the complainant's request is vexatious on the grounds that it is disproportionately burdensome on the Council, its effect of the Council has been to cause annoyance and disruption, and the information at the heart of the request is of very limited value to the wider public.

## Right of appeal

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61. 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)

62. 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.
63. 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**