

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 April 2022

Public Authority: Milton Keynes Council
Address: Civic Centre
1 Saxon Gate East
Central Milton Keynes
MK9 3EJ

Decision (including any steps ordered)

1. The complainant has requested from Milton Keynes Council ("the Council") the names of Council planners dismissed following alleged investigations into corruption.
2. The Commissioner's decision is that the Council has correctly applied section 14 (1) of FOIA to the request. As the Council failed to issue its refusal notice, within 20 working days, it breached section 17(5) of FOIA.
3. The Commissioner does not require any further steps.

Request and response

4. On 1 June 2021, the complainant wrote to the Council and requested information in the following terms:

"I REQUIRE THE NAMES OF THE MILTON KEYNES COUNCIL PLANNERS WHO WERE DISMISSED FOLLOWING THE LOCAL GOVERNMENT OMBUDSMAN'S INVESTIGATION INTO CORRUPTION (BACKHANDERS) FOLLOWING PLANNING PERMISSION BEING GRANTED TO [name and address redacted] : UNDER PLANNING APPLICATION NO.08/00548/FUL.

I ALSO REQUIRE THE NAME OF THE MILTON KEYNES COUNCIL EMPLOYEE WHO INSTIGATED THAT [name and address redacted] WAS PAID £2,500 TO KEEP QUIET (HUSH-MONEY) AND FURTHER GRANTED A REDUCTION IN HIS COUNCIL TAX PAYMENTS IN PERPETUITY FOLLOWING THE RETROSPECTIVE PLANNING PERMISSION FOR [address redacted] BEING GRANTED TO [name redacted].”

5. On 4 June 2021, the Council provided a response, stating that it withheld the information under Section 40(2).
6. The complainant sought an internal review of the Council’s decision on 5 June 2021.
7. The Council provided the complainant with its response to the internal review request on 6 July 2021 in which it maintained its position.

Scope of the case

8. The complainant contacted the Commissioner on 25 July 2021 to complain about the way their request for information had been handled.
9. Based on the wording used in its internal review, the Commissioner wrote to the Council, on 12 January 2021, for clarification as to whether it did actually hold any information within the scope of the request at the time of receiving it.
10. On the same day, the Council responded stating that it did and still does hold certain information within the scope of the complainant’s request. It further explained that if presented with the request again, it would consider it vexatious.
11. On 21 January 2022, the council issued a fresh refusal notice, citing Section 14(1).
12. The complainant did not consider this response to be satisfactory.
13. In line with his usual practice, the Commissioner wrote to the Council on 2 February 2022 for an explanation of its application of section 14(1) of FOIA.
14. The Commissioner, therefore, considers the scope of this case to be to determine if the Council has correctly applied section 14(1) to the complainant’s request.

Reasons for decision

15. Section 14(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious. There is no public interest test.
16. The term 'vexatious' is not defined in 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 (GIA/3037/2011). 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.
17. 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.
18. 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).
19. The Commissioner's guidance ¹ suggests that if a request is not patently vexatious the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation, or distress. In doing this the Commissioner considers that a public authority should weigh the impact of the request on it and balance this against the purpose and value of the requested information to the public.

¹ [Dealing with vexatious requests \(section 14\) | ICO](#)

20. When considering the application of section 14(1), a public authority can consider the context of the request and the history of its relationship with the requester. The Commissioner's guidance states: "The context and history of the request can often be a major factor in determining whether a request is vexatious and may support the view that section 14(1) applies."
21. Equally the context and history may weaken an argument that a request is vexatious in that the public authority needs to take into account any oversights on its part that may have led to the request.
22. However, the Commissioner is keen to stress that in every case, it is the request itself that is vexatious and not the person making it.

The Complainant's view

23. The complainant stated in his initial complaint to the Commissioner that it is only fair that the public are made aware of certain council officer's alleged behaviour.
24. From the evidence the Commissioner has seen, the complainant did not put forward any arguments to the Council to counter its view that their request was vexatious other than to repeat his allegation about council officers behaviour.
25. However, the Commissioner notes that it does not fall upon the complainant to explain why the request is not vexatious; rather the burden falls upon the Council to explain why the request is vexatious.

The Council's view

26. In citing section 14(1), the Council believes the complainant's request to be vexatious on a "number of levels". The first and in its view most clear indication is the tone in which correspondence is written and the use of block capitals which the Council understands to be shouting and/or aggressive.
27. In its submissions, the Council informed the Commissioner that the request repeats a number of baseless and untrue allegations for which the complainant has offered no evidence. These relate to a planning application, for which permission was granted 14 years ago.
28. In support of that argument, the Council have provided examples of correspondence in which the complaint has made accusations about the Council and individual employers.

29. Although the sample of correspondence, provided by the Council, is from the past year, it informed the Commissioner that the complainant has conducted a "long campaign of hostile and abusive contact".
30. The Commissioner notes the following sentence, directed at an individual employee, by way of an example:

"YOU ARE UNDOUBTEDLY AS CORRUPT AND INCOMPETENT AS THE REST OF MK COUNCIL ARE".
31. These allegations, which in the Council's view, are intended to embarrass it and cause detriment to its reputation, are completely without substance, and have been the subject of "a long campaign of hostile and abusive contact" by the complainant to the Council.
32. In its submissions, the Council provided a copy of its correspondence whereby it had written to the complainant regarding their repeated contact which had been inappropriate and unreasonable towards officers.
33. The Council highlighted, to the Commissioner, the use of profane and derogatory language towards council officers, by the complainant.
34. Although this is the only FOIA request held on record, by the Council, it believes that it is an "extension of his grudge against the Council, as a result of a long-closed matter and an abuse of the rights conferred under this legislation".
35. Summarising the overall impact of the complainant's correspondence and request, the Council believes the request to be vexatious and notes the comments of Lady Judge Arden in the Court of Appeal case (Dransfield v Information Commissioner and Devon County Council [2015] EWCA CIV454 [14 May 2015] in that "vexatiousness primarily involves making a request which has no reasonable foundation".

The Commissioner's view

36. In his guidance on dealing with vexatious requests, the Commissioner recognises that 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. Therefore, engaging section 14(1) is a high hurdle.
37. Most people exercise their right of access responsibly. However, a few may misuse or abuse FOIA by submitting requests which are intended to be annoying, disruptive or have a disproportionate impact on a public authority.

38. The Commissioner recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.
39. As his guidance explains:

“Although satisfying section 14(1) is a high hurdle this does not mean you can apply it in the most extreme circumstances, or as a last resort. You should consider using it, after taking account of all the circumstances, you believe the request is disproportionate or unjustified”.

Was the request in this case vexatious?

40. As in many cases which give rise to the question of whether a request is vexatious, the evidence in the present case showed a previous engagement between the parties. Clearly in this case, the Council considered the particular context and history was one argument that strengthened its position that, at the time of the request, the request was vexatious.
41. The Commissioner considers the complainant's frustration in dealing with the Council, and this is evident from the tone and language they use in their correspondence.
42. While the Commissioner accepts that public officials can be subject to criticism, he considers that, from the examples provided, the requester's correspondence goes beyond the level of criticism that a public authority employee should reasonably expect to receive. The Commissioner considers this to be clearly vexatious.
43. The complainant's practice of copying in multiple Council officials and other organisations is, in the Commissioner's view, a way of exerting pressure on the Council to comply with the complainant's wishes.

Conclusion

44. In reaching a decision in this case, the Commissioner has considered that section 14(1) of FOIA 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.
45. He also recognises 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.

46. The Commissioner has balanced the purpose and value of the request against the detrimental effect on the public authority.
47. The Commissioner is not aware that complying with the request, in isolation, would cause a disproportionate or unjustified level of disruption. However, in this case, the ongoing issues of harassment and distress to members of staff, are the significant factors which make the request clearly vexatious.
48. In the circumstances of the case, and on the basis of evidence provided, the Commissioner is satisfied that the Council was entitled to consider that the request was vexatious.

Procedural matters

49. Section 17(5) of FOIA requires a public authority, relying on section 14(1) to refuse a request, to issue a response, citing section 14(1), within 20 working days of receiving the request.
50. The Commissioner therefore finds that the Council breached section 17(5) of FOIA in responding to the request.

Right of appeal

51. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

52. 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.
53. 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

Phillip Angell
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