

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 December 2024

Public Authority: London Borough of Haringey
Address: Alexandra House
10 Station Road
Wood Green
N22 7TR

Decision (including any steps ordered)

1. The complainant submitted a request to the London Borough of Haringey (the Council) seeking list of individuals/companies it used to carry out independent stage 2 complaints. The Council refused to comply with the request on the basis of section 14(1) of FOIA as it considered it to be vexatious.
2. The Commissioner's decision is that the Council is not entitled to refuse to comply with the request on the basis of section 14(1) of FOIA.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the complainant which does not rely on section 14(1) of FOIA.
4. The public authority must take these steps within 30 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

5. The complainant submitted a request to the Council on 2 April 2024 about organisations contracted by it to carry out independent stage 2 complaints. This request was as follows:

"Please supply a list of the following people / company names on Companies House.

1.3 In order to fulfill this role and to inspire the confidence of the complainant in the fairness of the complaint procedure, the Council have commissioned self-employed individuals to be part of the Pool of "Independent Person".

1.2 To inspire the confidence of the complainant in the fairness of the complaint procedure, the Council have commissioned Independent Investigating Officers to carry out the investigation."

6. The Council responded to the request on 25 April 2024 and refused to answer this on the basis of section 14(1) (vexatious) of FOIA.
7. The complainant contacted the Council on the same day and asked for an internal review of this refusal.
8. The Council informed the complainant of the outcome of the review on 28 June 2024. This upheld the decision to refuse the request on the basis of section 14(1) of FOIA.

Scope of the case

9. The complainant contacted the Commissioner on 4 July 2024 in order to complain about the Council's decision to refuse their request on the basis that it was vexatious.

Reasons for decision

Section 14(1) – Vexatious

10. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.

11. The word “vexatious” is not defined in FOIA. However, as the Commissioner’s guidance on section 14(1)¹ states, it is established that section 14(1) 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.
12. FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such, it is an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.
13. However, 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.
14. The emphasis on protecting public authorities’ resources from unreasonable requests was acknowledged by the Upper Tribunal (UT) in the leading case on section 14(1), *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) (“Dransfield”).² Although the case was subsequently appealed to the Court of Appeal, the UT’s general guidance was supported, and established the Commissioner’s approach.
15. Dransfield established that the key question for a public authority to ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
16. The four broad themes considered by the Upper Tribunal in Dransfield were:
 - the burden (on the public authority and its staff);
 - the motive (of the requester);
 - the value or serious purpose (of the request); and
 - any harassment or distress (of and to staff).
17. However, the UT emphasised that these four broad themes are not a checklist, and are not exhaustive. It stated:

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-14-dealing-with-vexatious-requests/>

² <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

"all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA" (paragraph 82).

The Council's position

History and background

18. In submissions to the Commissioner the Council explained that it was relevant to consider the background to this request. It explained that in late 2021 it had received a Children's Statutory complaint from the complainant, which included issues of data protection within Children's Services. The Council explained that this complaint is currently at stage two. The Council explained that the stage two investigation had been significantly delayed due to a previous Investigating Officer's (IO) difficulties in meeting the complainant's requirements. The Council explained that the complainant had expressed concern that the replacement IO could be known to them so to facilitate this the Council consulted the complainant while appointing the new IO and the investigation is now underway.
19. The Council explained that it had received a number of requests from the complainant specifically related to this complaint. The Council explained that it was aware that the complainant had researched the first IO assigned to the complaint to ascertain their credentials and suitability to investigate this specific case. The Council explained that its concern was that releasing its full list of IO and Independent Person (IP) will enable the complainant to screen the list and approach their preferred choices as replacements. The Council explained that it was also concerned that this would enable other individuals who raised such complaints do to the same.
20. The Council explained that it commissioned IOs and IPs for each complaint based on a number of factors such as availability, frequency of use, and demographic considerations. It noted that all of the people on its list are qualified and vetted and are capable to carrying out the duties at hand. Furthermore, the Council explained that complainants who are unhappy with how their complaint has been handled have the option of escalating their complaints to the third stage and also to the Local Government and Social Care Ombudsman.
21. The Council explained that taking the above into account, it was satisfied that the request was vexatious, given the volume of previous requests on this matter, and also the lack of value in the request.

Volume

22. With regard to the volume of requests, the Council provided the Commissioner with a list of 14 FOI requests submitted by the complainant since November 2023.³ The Council explained that whilst these requests were not trivial in matter, considerable officer time had been devoted to logging and responding to these. The Council highlighted that it had complied with the requests as far as possible, with half of the total having been complied with.
23. The Council explained that it did not believe that complying with this request would take more than a few hours of officer time, however it would have to contact each IO and IP on the list to discuss the release of their information.

Value and purpose

24. The Council acknowledged that the request was not frivolous. However, it argued that it was clear that the complainant's requests are closely linked to their own complaint. As a result the Council argued that the FOI requests are made in support of this complaint and there is very limited value to the wider public in having the information released.
25. The Council explained that it had also considered whether there was a public interest in the release of the information. It acknowledged that there is always an argument in favour of transparency in terms of how Council's operate and spend money, and this includes who it commissions to carry out services such as these. However, the Council argued that due to the sensitive nature of Children's complaints, the list of IOs and IPs who work with it should not be released for data protection reasons. The Council noted that other local authorities do not publish their lists, nor do local authorities share this information with each other.
26. In summary, the Council argued that the burden placed upon it by the complainant's requests, the limited value of the information requested in terms of public interest, and the context of the complainant's ongoing Statutory Children's Complaint support its argument to refuse this request on the basis of section 14(1) of FOIA.

³ The Council explained that the previous figure of 20 requests cited in correspondence with the complainant included Subject Access Requests and requests that were rejected as being invalid.

The complainant's position

27. In submitting their request for an internal review the complainant explained that they wished to have access to the information in question as it was their intention to check whether the organisations on the list are registered with the Information Commissioner's Office as 'data controllers' as per the Council's contract with them.
28. In submissions to the Commissioner the complainant argued that they had provided a reasonable justification for seeking access to the requested information, ie to assess compliance with the Council's contract with the various IOs and IPs.
29. In terms of the burden of processing this request the complainant argued that there cannot be more than 20 companies providing the external review service for children's social care complaints. Moreover the complainant argued that the Council must have this information readily to hand.
30. Furthermore, the complainant argued that they would describe the Council's approach as obstructive, which has necessitated them having to make multiple requests.

The Commissioner's position

31. With regard to the volume of the requests, the Commissioner notes that of the 14 requests, four of these post date the request. Albeit that three of these were actually submitted within the 20 working day period by which the Council was obliged to respond to the request which is the focus of this notice.
32. The Commissioner does not consider 13 (or indeed even 14) requests over a six month period to constitute a grossly excessive volume of requests. Nevertheless he does recognise that this still represents an average of one request every two weeks which focus primarily on one particular topic. The Commissioner also accepts these requests have broadly been complied with. Therefore although complying with this request would not be overly burdensome, the Commissioner accepts that doing so would still require liaison on the Council's part with the third parties in question. Seen in the broader context of the complainant's recent history of FOI requests, the Commissioner accepts that dealing with this request would add to the burden of dealing with such requests. Such a burden in the Commissioner's view, although not as significant as in some section 14 cases, cannot be ignored.
33. With regard to the purpose and value of the request, the Commissioner notes that the Council accepts that the request is not frivolous. In the Commissioner's view the complainant has also advanced what he

accepts is a genuine and legitimate reason for seeking access to the requested information. That is to say part of their original complaint involved issues relating to data protection and the disputed request seeks to clarify issues relating to the Council's compliance with that legislation. Whilst the Commissioner takes the Council's point it could be argued that the requested information is only being sought by the complainant in context of their ongoing complaint, and thus there is no wider interest in this, he notes that the Council also acknowledges that there is a public interest in transparency in respect of the requested information. It also notes that such information could be used by other individuals who submit complaints to the Council, which in the Commissioner's view suggests a slightly wider interest in such information than simply that of the complainant.

34. The Commissioner acknowledges the Council's view that the requested information should not be disclosed for data protection reasons, and further its suggestion that disclosure could result in interference with its processes, ie if complainants attempt to screen those appointed to investigate their complaints. The Commissioner can understand the logic of both arguments. Indeed, there are exemptions contained within FOIA which could provide a basis to withhold the requested information on the basis of these arguments. That is to say section 40(2) the personal data exemption and section 36(2)(c), prejudice to the effective conduct of public affairs if the Council (via the qualified person) considers such an impact to be some 'other' type of prejudice.
35. However the Commissioner does not accept that simply because such information may be exempt from disclosure under FOIA on the basis of either of the two possible exemptions, that this particularly adds or supports the Council's view that the request is vexatious in the context of this case. He does not consider this to be a scenario – as in some cases – where complainant is deliberately asking for information which they know to be exempt (at least in the Council's view) in order to frustrate or annoy the public authority. Rather, as discussed above, the Commissioner accepts that the complainant has a genuine reason for wanting to access this information.
36. In conclusion, whilst the Commissioner accepts that processing this request will have an impact on the Council's resources, one that should not be overlooked given the complainant's previous FOI requests, he does not accept that this amounts to a grossly excessive burden. Moreover, whilst the Council may well have legitimate reasons for wishing to withhold the information from disclosure under FOIA, the Commissioner does not accept that this equates, or in the circumstances of this request, supports its position that the request is vexatious. The Commissioner also accepts that there is some value and purpose in the request.

37. Taking the above into account, the Commissioner is not persuaded that the request is vexatious and as a result the Council cannot rely on section 14(1) of FOIA to refuse to respond to the request. It must therefore issue a fresh response to this request which does not rely on section 14(1) of FOIA.

Right of appeal

38. 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

39. 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.
40. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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