

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 May 2024

Public Authority: Steyning Parish Council
Address: The Steyning Centre
Fletcher's Croft
Steyning
BN44 3XZX

Decision (including any steps ordered)

1. The complainant requested information relating to Steyning Parish Council ("SPC"). SPC relied on section 14(1) of FOIA (vexatious) to refuse to comply with the request.
2. The Commissioner's decision is that the SPC is not entitled to rely on section 14(1) of FOIA to refuse to comply with the request. He has also determined that SPC is in breach of section 17(5) of FOIA, by failing to issue a refusal notice within 20 working days of the request.
3. The Commissioner requires SPC to take the following step to ensure compliance with the legislation.
 - Issue a fresh response to the request that does not rely on section 14(1) of FOIA.
4. SPC must take this step 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. On 18 July 2023, the complainant wrote to SPC to follow up responses from SPC related to the disclosure of information concerning a 'legal claim against the council' that he had

previously requested on both the 13 May 2021 and also 2 November 2021. This was a chaser to his previous requests for information which were made in the following terms:

"Please disclose any claims since the May 2019 election which have been intimated against SPC and which have resulted in a referral to SPC's insurers and chargeable legal advice. Please redact the potential claimant's personal details. Please provide the response by email. As you know, there is a 20-working day limit for compliance."

6. The Council responded on 12 September 2023 to the complainant for this and four other unrelated FOI requests. It stated that the requests were refused under section 14(1) of FOI and stated:

"There has been no 'legal claim against the council' in the period 2021 to the present day. The clerk believes there is no need for (Name redacted) as a councillor to ask for further information. The review request was sent on the 18th July, and sent directly to the SPC's FOI panel which is not SPC procedure."

7. On 5 October 2023, following an internal review, SPC wrote to the complainant stating.

"The FOI Panel rejected the request on the grounds that there is no legal claim. The panel reviewed and determined that there has not been, nor is there currently, a legal claim against the Council and that full council has been appraised of this."

Reasons for decision

Section 14(1) – vexatious requests

8. The following analysis considers whether the request was vexatious.
9. 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.
10. The word "vexatious" is not defined in FOIA. However, as the Commissioner's updated guidance on section 14(1)¹ states, it is

¹ <https://ico.org.uk/for-organisations/dealing-with-vexatious-requests-section-14/>

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.

11. 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.
12. However, the ICO 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.
13. 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.
14. 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.
15. 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).
16. However, the UT emphasised that these four broad themes are not a checklist and are not exhaustive. It stated:

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 Public Authority's position

17. The position of SPC is that it considers the request to be vexatious. In its responses to the claimant on 12 September 2023 for this request (and 4 other separate requests for information received between July 2023 and August 2023) SPC stated that 'there had been no legal claim against the council in the period 2021 to the present day' and that

"In response to all outstanding requests noted below, I find them to be vexatious under Section 14 of the Freedom of Information Act, and by way of further explanation I reference the letter you received from the Information Commissioners Office dated 7th June 2018 which stated the following – 'The Commissioner will expect the Council to take a more robust and pro-active approach with regard to its processing and managing of requests in future, as the wholly unsatisfactory situation which has persisted for the last several years cannot be allowed to continue.

The current outstanding FOI requests from you are noted below and I am answering them together as I see them very much as part of an ongoing attempt by you to knowingly overburden the Clerk's office. For these reasons I am refusing to spend further time on the matter."

18. In its representations to the Commissioner, SPC stated that they believed that the complainant had 'mounted a campaign of continual FOI requests throughout the last 13 years to this council'. It explained that a precise number could not be given but it was thought to be between 40 and 100 and this had placed an unnecessary burden on SPC's limited resource which it now considered had become by their nature a harassment to staff.

19. In support of its position, SPC specifically referenced a letter from the Commissioner to SPC dated 7 June 2018 as its justification for applying section 14 of FOIA in this case.

20. SPC additionally stated that despite the complainant now being a councillor at SPC and therefore privy to council information, via its councillors 'right to know' policy, that it had continued to receive unnecessary FOI requests.

21. SPC further stated that the complainant in their capacity as a councillor had received updates on this matter and whether or

not there had been any costs to the council in relation to insurance claims or legal matters.

The complainant's view

22. The complainant's view is that SPC has unnecessarily "dragged out" the process for responding to this chaser request and two previous requests on the same subject over a three-to-four-year process and has "repeatedly shifted its grounds" for refusal.
23. The complainant also stated that SPC had failed to conduct adequate searches and had not complied with the directions of the Commissioner in Decision Notice IC-151369-W6D8 to confirm whether or not it holds any information within the scope of the request or provide an adequate refusal notice. Had it done so, the matter would have been concluded and this repeated request and chase for a response would have been unnecessary.³

The Commissioner's decision

24. In cases where a public authority is relying on section 14(1), it must demonstrate why it considers that a request is a disproportionate, manifestly unjustified, inappropriate or an improper use of FOIA.
25. The Commissioner acknowledges the complainant's previous cases and the Commissioner's letter dated 7 June 2018. He also notes that this chaser request is related to two previous requests in 2021 on a matter for which the Commissioner has already issued a Decision Notice.
26. However, each request must be assessed and judged on its own individual merit, and it is the request itself that must be vexatious, not the person making it and each request must be considered on a case-by-case basis.
27. In this instance the request appears to focus on an issue of concern to the complainant that his previous requests for information have not been concluded or fully addressed by SPC despite the complainant's access to information via the SPC 'right to know' policy. The complainant has been a member of the 'Finance

³ <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4021549/ic-151369-w6d8.pdf>

and General Purposes Committee' which he considers has responsibilities for such matters.

28. The complainant has stated that he is falling back on FOIA because the council is not providing the information to him as a councillor.
29. In its representations to the Commissioner, SPC has not provided sufficient evidence or explanation of the burden, other than a reference to an ICO decision and a six-year-old letter from the Commissioner in 2018 that a particular request was vexatious at that time.
30. When asked by the Commissioner to set out the burden and provide evidence to support a reliance on section 14 of FOI – SPC referred to the 2018 letter again. Further explanations of the burden to SPC, however, only extended to confirming that the complainant has made frequent previous requests stating:
“I don't know the precise number, let's say somewhere between 40-100 over 13 years”.
31. SPC additionally referenced that the complainant in their capacity as a councillor still has a right of access to information and the SPC policy stipulates criteria for a councillor and their 'right to know'.
32. The Commissioner appreciates and notes that sometimes it is beneficial to request information under FOIA and providing that there are no exemptions from its disclosure to the world at large provides transparency in the public interest, whereas a disclosure to a councillor may have some conditions of confidentiality applied. No specific detail, however, has been provided in this regard or what restrictions may apply to the complainant as a councillor.
33. The Commissioner considers that SPC has not been clear or consistent in its responses to the complainant in respect of his prior requests, and therefore the complainant has a legitimate basis for concern with any inconsistencies and contradictions received.
34. He also acknowledges that there has at some point been reason for the Commissioner to issue a letter with regard to section 14 vexatious matters, but this was over 6 years ago and not related to this complaint. As each request should be considered on the circumstances at the time of the request, the Commissioner considers that SPC has not provided compelling arguments as to why it considers that s14(1) of FOI is engaged.

35. The Commissioner considers that a public authority must meet a high bar to demonstrate that section 14(1) of FOIA is engaged. In this case SPC did not provide the Commissioner with sufficient evidence to persuade him that the bar is met and is not persuaded that this request has the potential to cause a disproportionate or unjustified level of disruption, irritation, or distress.
36. Having considered all the factors applicable in this case, the Commissioner is satisfied that the similarity between this case and others where the Commissioner has issued a decision Notice to SPC⁴ is such that he is able to reach the same conclusions here about the citing of section 14(1) of FOIA to withhold the information.
37. Therefore, the Commissioner's decision is that the request was not vexatious, and he orders SPC to issue a fresh response which does not rely on section 14(1) of FOIA.

Procedural matters

Section 17 – refusal notice

38. Under section 1(1) of FOIA a public authority must (a) confirm to an applicant whether it holds information they've requested and (b) communicate the information to the applicant if it's held and isn't exempt information.
39. Section 17 of the FOIA concerns the refusal of the request and section 17(5) states that:

"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the

⁴ <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022308/ic-155299-w9b5.pdf>

<https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4025190/ic-155765-x1f0.pdf>

time for complying with section 1(1), give the applicant a notice stating that fact.”

40. In this case, the complainant submitted their request on 4 July 2023, but SPC didn't issue a refusal notice until 12 September 2023 and therefore SPC also breached 17(5) of FOIA.

Other matters

41. Although they do not form part of this decision Notice, the Commissioner considers it to be appropriate to highlight the following matters of concern.
42. The Commissioner notes that this is not the first time he has raised concerns regarding SPC's failures in providing compelling evidence to support a reliance on section 14(1) of FOI.
43. SPC's continued reliance upon a letter issued by the Commissioner six years ago is not sufficient evidence on its own.
44. The Commissioner has published good practice guidance for public authorities on the benefits of a good record management systems that will support and assist them with request handling and decision making.
45. Additionally, he has published a section 14 (Vexatious) tool kit for public authorities to provide indicators of where improvements could be made to support application of this exemption.⁵

⁵ <https://ico.org.uk/for-organisations/foi/foi-self-assessment-toolkit/>

<https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-45-code-of-practice-request-handling/>

<https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-46-code-of-practice-records-management/#benefits>

Right of appeal

46. 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

47. 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.
48. 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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