

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 March 2014

Public Authority: Hemsworth Town Council

Address: Community Centre
Bullenshaw Road
Hemsworth
Pontefract
West Yorkshire
WF9 4NE

Decision (including any steps ordered)

1. The complainant made two information requests on the same day to Hemsworth Town Council (the council). Combined, the requests were made up of 21 points, mainly with regards to the council's finances. The council has refused both requests, relying on section 14(1) and 14(2) of the FOIA. It considered the requests to be vexatious and repetitious.
2. The Commissioner's decision is that section 14(1) of the FOIA is engaged and therefore the council was correct to refuse the requests.
3. As section 14(1) of the FOIA is engaged, the Commissioner has not gone on to consider section 14(2) of the FOIA. However, he has found that the council has breached section 17(7)(a) and (b) of the FOIA as it did not advise the complainant whether it had an internal review procedure or of his right to complain to the Commissioner under the FOIA.
4. As the case has now been considered by the Commissioner, he does not require the council to take any steps.

Request and response

5. On 8 May 2013, the complainant made two separate information requests to the council:

See annex 1

6. On the 22 August 2013 the complainant contacted the Commissioner as he had not received a response from the council.
7. The Commissioner contacted the council to see whether it had received the request and whether a response had been sent to the complainant.
8. The council confirmed that it had received the information requests but had issued a refusal notice to the complainant on 25 November 2011 stating that it will not respond to any correspondence it considers to be either repetitious or vexatious. This refusal notice was from the council's grievance panel.
9. The Commissioner asked the council to consider the requests and whether it needed to provide a refusal notice to the two 8 May 2013 requests.
10. The council wrote to the complainant on the 23 December 2013 advising why it has refused the requests as vexatious and or repetitious.

Scope of the case

11. The complainant has advised the Commissioner that he is not satisfied that his 8 May 2013 requests have been refused.
12. The Commissioner considers that the scope of the request is to consider whether the council is correct to rely on section 14(1) of the FOIA. He will only go on to consider section 14(2) of the FOIA if he considers that section 14(1) of the FOIA is not engaged.

Reasons for decision

13. Section 14(1) of the FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
14. The term "vexatious" is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the *Information*

*Commissioner v Devon CC & Dransfield*¹. 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.

15. 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.
16. 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 requests². 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 the case will need to be considered in reaching a judgement as to whether a request is vexatious.
17. The council has provided the Commissioner with its reasons as to why it has applied section 14(1) of the FOIA.
18. It firstly explained that the complainant is a councillor of the council, and has been since 2011.
19. The council has told the Commissioner that since 2007 the complainant has applied for two judicial reviews against it, and they were refused by the High Court. Dated 12 December 2008, 25 July 2013.
20. The council was also party to a third judicial review on 25 July 2011. This was also refused.
21. The council has provided the Commissioner with a copy of these judicial reviews. He notes that the 25 July 2013 judicial review was applied for by [name redacted] not the complainant. However, there was an application for the complainant along with 4 others [names redacted] to

¹ GIA/3037/2011

²

http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

be added as interested parties to pay costs incurred by the council. They were not ordered to pay any costs. The council has stated to the Commissioner that [name redacted], who requested this judicial review, was an acquaintance of the complainant.

22. The Commissioner considers that because the 25 July 2013 judicial review was not made by the complainant, then this carries far less weight, if any, in his consideration for a vexatious claim. However, he considers that the other two judicial reviews may carry more weight in his considerations.
23. [Paragraph redacted]
24. [Paragraph redacted]
25. [Paragraph redacted]
26. The decision concluded that having considered correspondence from both the complainant and clerk, that it has had to consider the health and wellbeing of its staff and as the complainant had failed to adhere to interim measures put in place, so the grievance panel put a list of procedures in place for the complainant to follow. These included:

"Any visits to the office by you are now to be by appointment only."

"The appointment will be with the Chair of the Council and/ or other designated councillors/staff as the Chair decides is appropriate"

"All questions/ requests for information should be written concisely prior to the appointment ready to be handed over".
27. The Commissioner can see how the council in having to implement such procedures to protect the clerk's wellbeing would be a cause for concern. The council has also informed the complainant that the amount of correspondence he is submitting is having an adverse effect on the clerk's ability to carry out her day to day council functions. The Commissioner is of the opinion that if the council's grievance panel has had to implement such procedures, then this demonstrates that there is a detrimental impact being placed on the council's resources and staff. The Commissioner also notes that the grievance panel had to intervene and implement these procedures within the first year of the complainant becoming a councillor.
28. The grievance panel letter is what the council relied on in not having to respond to any other requests it considered vexatious or repeated from the complainant.

29. The council has provided the Commissioner with a conclusion letter from its external auditor, dated 11 October 2012. This was following concerns raised by the complainant, who considered the council to be poorly managed and he stated that its operational and financial records do not bear scrutiny.
30. The external auditor concluded from its enquiries, that it was satisfied that the council had acted in a reasonable manner in relation to all the matters that the complainant had raised.
31. The council considers that this demonstrates the complainant is making unsubstantiated accusations about the way the council operates and that this adds to the detrimental impact being placed on it and is again diverting the council's time, from its other duties, in having to deal with such allegations.
32. The Commissioner considers that the external auditor is there for people to raise concerns about a council's operations; however the fact that the auditor was satisfied with how the council had acted in all of the matters of concern, does demonstrate that the council may be being subjected to unjustified accusations. This again would be impacting the council's resources in staff time to deal with such accusations.
33. The council has told the Commissioner that the amount of correspondence it is receiving from the complainant is impacting its every day duties and that the clerk has had to work additional hours to respond to all of the correspondence.
34. The Commissioner has viewed some of the sample correspondence provided by the council, in its responses to the complainant the council does tell the complainant that the amount of time the clerk is having to spend on responding to him is impacting her other daily functions.
35. The Commissioner considers that the council has attempted to make the complainant aware of the impact his levels of correspondence is having on it.
36. The council has supplied the Commissioner with a copy of a letter dated 7 June 2011 that it sent to the complainant. It addressed 6 letters that he had sent to the council between the 10 May 2011 and the 1 June 2011 and again how the level of correspondence received was impacting on the clerk's daily functions.
37. The council has advised the Commissioner that although the complainant sent those 6 letters inside one month, on average it has been receiving between 1 – 2 items of correspondence from the complainant on a monthly basis. This has been the case since he became a councillor in 2011 up to the date of the request.

38. The council has explained that the correspondence it receives is usually made up of several pages of questions, statements, requests for information, requests for meetings and explanations. It has advised that having to deal with all of the issues in the correspondence, not all being requests for information, has taken up a disproportionate amount of the council's time and is again diverting the clerk's attentions away from her other duties at the council.
39. The Commissioner has viewed a copy of the clerk's submission to the grievance panel, dated 7 November 2011, and in it she states that due to the amount of letters she is receiving from the complainant, in order to keep up with her other council duties, she has amassed 50 hours in toil since April, in having to respond to these letters. This goes towards demonstrating that the council has had to put a disproportionate amount of time into responding to the complainant.
40. The council has provided the Commissioner with evidence of 7 folders containing all the correspondence the complainant has sent to the council, to show the amount of correspondence it has amassed from the complainant.
41. The Commissioner has also been provided with samples of the types of correspondence that the complainant has sent to the council over this time period. It does appear to be a mixture of requests, statements and explanations, which would require a considerable amount of time to read and respond to the requests.
42. If this, as the council state, is happening every month over a sustained time period, then the Commissioner can see that a detrimental effect would be being placed on the council's resources and this could start to place stress on it and its staff in having to continually provide a response every month. Even if all of the correspondence is not requests for information, the cumulative effect does in the Commissioner's view, demonstrate a disproportionate amount of time being required to respond to the complainant's correspondence. Adding to the impact on the council's abilities to perform its other duties.
43. The council explained to the Commissioner, it deemed the 8 May 2013 requests vexatious because, as with his previous correspondence, alongside his requests for information he is requesting explanations, meetings and has also stated that fraud could be involved in the council with public funds.
44. The council state that the accusations of fraud are unjustified when considering an external auditor has already investigated and has said he is satisfied with the council's actions. These unsupported accusations are further causing unjustified stress to the council and its staff.

45. The council consider that the complainant is still not satisfied with the way it is conducting its finances. Having to continually respond and provide this type of financial information after an external auditor has assessed its practices is becoming disproportionate and unjustified, and that it is in the public's interest that the council's resources are not continually taken up and its time diverted in having to address the complainants concerns of this nature.
46. Also the council has advised that the complainant being a councillor is already supplied with the council's financial information such as budget reports and accounts, and some of the information he has requested is already in these reports and accounts. So this again shows there is an unjustified and disproportionate persistence from the complainant in requesting information he already has access to as a councillor.
47. The council's explanations to the Commissioner, do demonstrate that the complainant's requests of 8 May 2013, when viewed in context with the previous history of this case, adds to the detrimental impact being placed on its resources. It has had to divert it's time to deal with the complainant, and the Commissioner can see how suggestions of fraud would be placing unjustified stress on the council after considering an external auditor is satisfied with the council's activities. It demonstrates that the complainant may never be satisfied with the council's responses on these issues, and so would lead to similar requests of the same nature. It would be unjustified and disproportionate for the council to have to keep on responding to these lines of enquiries.
48. The Commissioner appreciates that the complainant may have reasons to make these requests, but the impact that this is now having on the council to respond to this line of enquiry has, in the Commissioner's view, become disproportionate and unjustified.
49. The Commissioner on considering the above is of the opinion that the council are correct to rely on section 14(1) of the FOIA not to provide the requested information in this case.
50. As the Commissioner finds section 14(1) of the FOIA is engaged, he has not gone on to consider the application of section 14(2) of the FOIA.

Section 17(7) of the FOIA

51. Section 17(7) of the FOIA state that:

A notice under subsection (1), (3) or (5) must

- (a) Contain any particulars of any procedure provided by the public authority for dealing with complaints about the handling of

requests for information or state that the authority does not provide such a procedure, and

- (b) Contain particulars of the right conferred by section 50
52. On reviewing this case, the Commissioner notes that the council relied on its grievance panel decision letter of 25 November 2011 not to provide a response to any requests it considers vexatious or repeated from the complainant. And it relied on this letter initially not to provide a response to the complainant.
 53. The Commissioner has considered this letter, and it did not advise the complainant of any internal review procedure or of his right to complain to the Commissioner under the FOIA. Therefore the council has breached section 17(7)(a) and (b) of the FOIA.
 54. Although the Commissioner does not require any further steps in this case, he would expect the council to follow the correct procedures under the FOIA in any future refusals.

Right of appeal

55. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

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

56. 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.
57. 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

Annex 1:

First request:

1. *"Could you please provide for inspection or copies as soon as possible, the following. Signed contracts and agreements between [company name redacted] and [company name redacted] including the overage financial details and time limits.*
2. *The labour councillors at a special town council meeting on 11/07/12 resolved not to give [name redacted] an extension of time to pay for the complex and refused an amendment to the contracts on the solicitors advice. Could you please provide copies of solicitors letters to [name redacted] from 11/07/12 to 08/05/13 and up date of the situation and the costs incurred re instructing the councils solicitor to act, deal with the matter.*
3. *Please provide copies of bank statements showing the V.A.T. the council claimed back re the invoice from [name redacted] for payments of the community centre £356,320. And the bank account it is currently in. Or a full break down of what it has been used FOR and what remains.*
4. *Copy of Invoice provided by [name redacted] re works completed at Lakeside café SHOWING amounts of V.A.T. charged, amount of vat claimed back and the paper trail of bank account in which it was placed and its use or current existence, this is due to being denied the right under sec 151, financial regulations, where all Councillors are legally responsible for the financial running of the council.*
5. *Hemworth town council, owns and rents garages please provide details on this income.*
6. *Please provide income from the allotments 2012/2013, i.e. Grove lane, spring fields, west end etc.*
7. *Please explain where in the localisation bill, general power of competence, which gives [The council powers to act] does it give committees. The same powers. [council* must act reasonably when using its powers.] WENESBURY RULES.*
8. *[Name redacted], former employee if this council to which every town councillor is legally responsible for its financial affairs, therefore we respectfully request, the detailed settlement reached and details why. Failure to provide this information will result in legal action as it is every councillors duty to be Femi lure with financial controls of this council. Re-section 151, of the 1972 local government act.*

9. *Please provide copies of letters/ emails, identifying the date and time the town clerk arranged the meeting with –Kirkby, Moorthorpe.- South Elmsall, Upton, N.Elmsall, re GRANT from W.M.D.C. budget & precept . DISCUSSION. [sic]*
10. *We request a meeting with the district valuer, internal auditor as soon as possible to clarify the failures of Governance, accountability, and financial management of this council, re/ lakeside café', complex, sandy gate, community centre ,allotments , garages, water park, green space issue, legal matters Saul construction. Outstanding debts. And Solicitors costs.*
11. *Fitzwilliam welfare centre, copies of last 3 years financial running accounts, income and expenditure, amount charged re subscriptions and entry fees.*
12. *[address redacted]. Details of charitable registration of [business name redacted], registered details with company house etc. sight of operating constitution and financial accounts."*

The second request:

"...The duly requested councillors respectfully request the sight of the following or copies.

1. *Signed contracts and agreements between [name redacted], and [name redacted] including the overage financial details.*
2. *In the head of terms [not amended] 8.65 acres can actually be developed with the remainder being dedicated as public open space including woodland. This land still belonging to the council then needs to be tidied up or allowed for public use as local residents have serious concerns about tipping etc.*
3. *[name redacted] took part of the complex land when building a 4 bedroomed house near the new entrance, a local resident [name redacted] has complained as his daughter was about to purchase his house only to be told the council still owns title to part of the land in which it is built, by their solicitor [sic]. There are also issues with the houses built on our old entrance [could you please clarify what the legal position is as in July 2012 this council voted to instruct the councils solicitor [sic] to pursue [sic] this matter re [name redacted] not being given any more time to pay the £1.4m which the district valuer said re [name redacted] up date [name redacted] will pay in spring 2012, will [name redacted] be paying interest on the outstanding balance and our costs pursuing [sic] it. There is also an issue of £350,000 balance to this council re claw back from residual body of £850,000 indexed linked in the head of terms to provide*

football facilities as only \$498,900 was actually paid, total outstanding £351,100. + £350,000 S106 re loss of athletic facilities that the town clerk stated she had secured at an earlier council meeting. Answers to all these an request to be placed on the agenda for an extreordinery [sic] special council meeting we also request the district valuer, and district auditor be present to answer questions on the outstanding monies this council is legaly [sic] required to have collected by now it is public funds, this deal was concluded at [name redacted] risk with no cost to the council if all went wrong. So any costs incurred in persuing [sic] this money must be met by [name redacted] something the chairman failed to mention at the A.G.M. Also why this council is dealing with [name redacted] work contracts when the council have instructed legal instructions, is this double standards when served with a pre action letter from the duly elected councilors.

- 4. Who gave dispensation for the Town Clerk to meet with South Kirby Moorthorpe, & South Elmsall Town Councils. The date and time of the meeting please who attended as setting the budget and precept is for H.T.C. This infermation [sic] is also requested under the Freedom of Infermation [sic] Act 2000.*
- 5. [Name redacted] who came to me to be a witness for him in his appeal; Tribunal hearing a, what were the grounds to make a financial out of court settlement and what was the financial payment as this is public money we are entitle [sic] to know to try and prevent this happening again and as duly elected councilors [sic]. If this is confidential then to prevent discrimination we should be told as were [sic] the labour councilors, in the stricktest [sic] confidence, Could you also provide a copy of the staff handbook and explain why in the standing orders it states the grievence [sic], complaints panel will be chosen from a full Town Council on a rotor basis, yet only labour councilors are selected.*
- 6. While we understand what the £498,100 from [name redacted] was spent on could you please provide a full breakdown of this used monies and where is the £356,320 claimed back V.A.T or provide a full breakdown of what it was spent on as no independent councilors authorised its use. We also request a meeting to question the internal auditor [name redacted].*
- 7. Please confirm details re kitchen equipment for the community centre as this was included in the head of terms and I was personally told this would be fully equipt [sic] by the district valuer and provided by [name redacted] in 2011.*

8. *Ride on mower budgeted for this was in the town clerks notes capital receipts [sic] and expenditure May 2011,*
9. *1.16 the price "\$4.500.00 made up as follows sprts development this £350.000 should not be included in the valuation/sale price as this is a financial contribution from the developer re S106 signed agreement not part of the valuation sale price and, otherwise the valuation/sale price is reduced to !£4.150.000 contary [sic] to the district valuers head of terms. It is this councils duty to collect this now or issue proceedings, The total agreed outstanding amount is £350.000 valuation sale balance, £350,000 S106 legal agreement, +£1.4M cash deffered [sic] until spring 2012, now overdue with interest and costs.*

We require an answer as soon as possible and meetings as we feel fraud may be involved with public funds and land the appropriate fraud department will be notified to investigate the lack of promptness and public accountability in dealing with these matters.

Request a meeting with the district valuer, internal or external auditor to clarify this council is operating within the financial regulations."