



Information Commissioner's Office

Promoting public access to official information
and protecting your personal information

Mr David Edwards
Interim Solicitor
Rother District Council
Town Hall
London Road
Bexhill-on-Sea
East Sussex
TN39 3JX

ROTHER DISTRICT COUNCIL	
CHIEF EXEC DEPT.	
FILE NO	
ACKLD	
- 5 AUG 2008	
REFERRED TO	INITIALS

4th August 2008

Case Reference Number ENF0209655

Dear Mr Edwards

Freedom of Information Act 2000 (the "Act")

I write in my capacity as a member of the Information Commissioner's Office's (ICO) Good Practice and Enforcement Team.

As part of our role in assessing compliance with the Freedom of Information Act 2000 (the 'Act') and the associated Codes of Practice, I am approaching you in relation to some concerns we have about Rother District Council's (the "Council") responses to requests for information. I should clarify that these matters do not relate to section 50 complaints¹ received by the Commissioner, rather, they have been brought to our attention via the "What do they know" website². I shall briefly set out the areas of concern and how I anticipate matters moving forward.

The Council's View of What Constitutes a Valid Request

Having viewed a number of the Council's initial responses, as reproduced on the website, it is apparent that various standard templates are being used to inform applicants of the Council's view of what constitutes a valid medium for a request. An early version of this appears in a response to a request submitted by an A N Eastwood (dated 25 March 2008) which states:

"I refer to your email. A request under the Freedom of Information Act 2000 must include an address for correspondence. This is required by S.8(1)b. Could you therefore please supply a postal address, even if you require a response by email. I cannot progress your request until I receive this information."³

¹ Section 50 'Application for decision by the [Information] Commissioner'

² <http://www.whatdotheyknow.com>

³ http://www.whatdotheyknow.com/request/amounts_paid_to_common_purpose_a



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An expanded version of this (apparently standard) paragraph appears in a number of later responses to requests, a recent example being a reply to a request made by Richard Jackson (dated 24 July 2008). In this response (dated 24 July 2008), the Council states:

"Under section 8 of the Freedom of Information Act 2000, a request for information must comply with three requirements. It must:

- (a) be in writing,
- (b) state the name of the applicant and an address for correspondence, and
- (c) describes the information requested.

After initial consideration, this request appears to comply with requirements (a) and (c) but it does not comply with requirement (b) because you do not provide an address for correspondence. We are entitled to this even if the request is made by e-mail and you ask us for a reply by e-mail, and we are able to comply."

The response goes on to state the following, which, having viewed a number of other responses available on the website, appears to be standard text:

"Under section 14 of the Freedom of Information Act 2000 we are not obliged to comply with a request for information if the request is vexatious, and where we have previously complied with a request for information which was made by any person, we are not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request. The Information Commissioner has advised that a request may be regarded as vexatious if it:

- clearly does not have any serious purpose or value;
- is designed to cause disruption or annoyance;
- has the effect of harassing the public authority; or
- can otherwise fairly be characterised as obsessive or manifestly unreasonable.

Unless we knew your real name and real address it would be more difficult for us to determine whether your request was vexatious or repeated. For instance, unless you are a professional journalist or researcher, your request would be less likely to have any serious purpose or value if you do not live in this District."⁴

⁴ http://www.whatdotheyknow.com/request/breakdown_on_foi_requests_and_re



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The Commissioner's View

Address for Response

The Commissioner has published guidance for public authorities which clarifies what, in his view, constitutes a valid request for information. In relation to the medium by which a request may be submitted and what constitutes a valid return address (as specified in section 8(1)(b) of the Act) this guidance states:

"Any correspondence could include a request for information. If it is written (this includes email), legible, gives the name of an applicant, an address for reply (which could be electronic), and a description of the information required, then it will fall within the scope of the legislation."⁵

Additionally, the Ministry of Justice (the "MOJ") has published guidance for request handlers which states:

"There is no obligation to comply with a request for information if it does not give a return address.

If a request is received by email and no postal address is given, the email address should be treated as the return address."⁶

As the Council's interpretation differs from that of the published guidance of both the Commissioner and the MOJ, my recommendation would be that the Council, therefore, either removes or amends their standard paragraphs accordingly.

Reference to Section 14

As you know, section 14 of the Act provides that public authorities are not obliged to comply with vexatious or repeated requests. The Commissioner has published guidance on the application of section 14 (copy enclosed) which sets out the specific contexts in which a request might be deemed repeated or vexatious.

With regard to the Council's concerns that a request submitted via email may make it difficult to determine whether an applicant is who they claim to be, you will be aware that the Act does not entitle public authorities to enquire into the circumstances or intentions of

⁵ See page 6 of "Freedom of Information Act 2000 and Environmental Information Regulations 2004: Hints for Practitioners handling FOI/EIR requests", hard copy enclosed, viewable on the ICO's website here: http://www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_application/foi_hints_for_practitioners_handling_foi_and_eir_requests_2008_final.pdf

⁶ See "What constitutes a freedom of information request?" on the MOJ's website here: <http://www.justice.gov.uk/guidance/foi-procedural-what.htm>



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a requester or to seek verification of their identity. In some limited circumstances the identity of a requester might be relevant in respect of determining whether a request is vexatious or repeated, however, as the Commissioner's guidance states:

"....a public authority should not base any decisions as to disclosure on the name supplied by a requester."

In relation to the Council's (apparently standard) reference to section 14 in their initial responses to requests the Commissioner considers that this represents poor practice as, although section 14 is not being applied to refuse requests in these instances, the suggestion that it is relevant is misleading and obstructive.

Section 77 of the Act makes it an offence for public authorities to block with the intention to prevent the disclosure of information to which an applicant would be entitled. Whilst the Commissioner is not suggesting that the Council is undertaking to do this he would like to point out that, in making reference to section 14 in this (apparently) standard manner, the Council might be opening themselves up to such accusations from those submitting requests.

Next Steps

In view of the matters referred to above the Commissioner would appreciate it if the Council would provide following assurances:

- (1) That the Council removes its standard response to requests submitted via email or amends this to reflect the Commissioner's guidance.
- (2) That any reference to section 14 in the Council's responses to requests should be relevant and specific, i.e., only where section 14 is explicitly being applied to refuse a request.

We look forward to hearing from you within 20 working days. If this timescale poses a problem please do contact me.

Yours sincerely

A handwritten signature in black ink, appearing to be 'CW', written in a cursive style.

Christopher Williams
Enforcement Officer

Direct dial: 01625 545 852
christopher.williams@ico.gsi.gov.uk



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- FOI Enforcement Strategy
- Freedom of Information Awareness Guidance No. 22: Vexatious and Repeated Requests
- Freedom of Information Act 2000 and Environmental Information Regulations 2004: Hints for Practitioners handling FOI/EIR requests