

This is part of a wider response to the requestor, and has been split down to it's relevant sections for posting on whatdotheyknow.com

Your appeal to RFI 1204

I am familiar with your request, as I have spoken to you over the telephone and I am the Public Enquiries Manager. However, as the reviewer of the decision, I am considering the matter afresh and I have had regard to the *Code of Practice* under section 45 of the Freedom of Information Act to this end.

I have now concluded my internal review of your request (RFI 1204) that had been classed as vexatious under section 14(1) of the Freedom of Information Act.

Section 14(1) does not oblige a public authority to comply with a request for information if it is vexatious.

Although the Freedom of Information Act does not define what is 'vexatious', guidance from the Information Commissioner and case law suggests what things should be considered. That guidance was originally sent to you by Shaun Kavanagh in his response dated 4 January.

When considering if a request is vexatious, the guidance suggests that the history of the request, including the full context and any other overlapping requests or correspondence, should be taken into account. For this reason, I have considered your recent correspondence with the Commission. This includes emails, requests and telephone calls.

The guidance also recommends that the public authority should consider five key questions;

- Can the request fairly be seen as obsessive?
- Is the request harassing the authority or causing distress to staff?
- Would complying with the request impose a significant burden?
- Is the request designed to cause disruption or annoyance?
- Does the request lack any serious purpose or value?

In this case, Shaun Kavanagh considered these questions and decided that your request was vexatious. However, on reviewing the matter, I accept he did not refer to all the evidence upon which he had based his decision or the weight he had applied to each factor. I now refer to the information I have taken into account in reviewing the decision, which was in existence at the time of the decision and subsequent to it.

Offers to withdraw requests if we acted in a certain way

In your email of 4 December you said, *'If you help I will withdraw all ICO FIA appeals'*,

although I accept that you quantified this by adding:

'only for the reason that I will spend that time with my daughter, instead of trying to prove what the council did'

In your email of 10 December you said, *'Only account for what i am saying in this email if the district auditor is not going to support any of the options i requested this morning'*.

and,

'If i get them account transfers produced ignore this.'

In another email sent on 10 December you said, *'my offer to withdraw if you help me get the account info'*

and this continued after you had appealed our original decision. In your email of 14 Jan, you wrote about your desire that the Commission take action, obtain and look at information from the Council. You said in that email, *'If not [i.e. if outside of FoIA the Commission has not taken the action you would like] take this as a request of an internal review'*.

In Shaun Kavanagh's view, comments made at the time of his decision showed that your request was designed to cause disruption and that it lacked serious purpose while imposing a significant burden. He took into account it also had the connotation that you would continue to make requests if the Commission didn't do as you asked.

The History of the Request

Shaun Kavanagh also concluded that your request lacked serious purpose because of its origins. On the website 'whatdotheyknow.com' you left an annotation on another request on 1 December 2009. This annotation was:

'Lets find the vapour trail

<http://www.whatdotheyknow.com/request/pr...>

<http://www.whatdotheyknow.com/request/up...>'

This annotation referenced two requests. The first linked to your request that was classed vexatious. The second link I note was to your request of 8 January which I will address later in this letter.

You also left an annotation on another request on 7 December:

"We need to get some sort of voluntary body organised to monitor the Audit Commission, but I am not sure how this could be done. "

i am, lets varify every report we can find on there site, then go digging around the councils systems to find the real figures."

Your request may well have had a value to the other requestor, but it was felt that you were attempting to start a campaign and by making the request create work for the Commission which was not within the spirit of the Act.

Your request was also considered as the latest in a long line of requests, correspondence and phone calls that were becoming obsessive. I am aware that on several occasions, Shaun Kavanagh, Dan Allbon and myself have all told you that the Commission cannot review the judgments and decisions of the appointed auditor, nor instruct him to take action.

Following our conversations on the telephone, it seems to me that the root cause of your problems is that you have been unable to get the Council to accept your points and have decided to try and prove your claims in different ways. The issues you have had with your council, that you've told me about on the telephone and have set out in your emails of 6, 8 and 14 January, are genuinely not issues that the Commission can influence in any way.

You have also been advised of the route you should consider if you disagree with the decisions and judgments of the appointed auditor, which is to approach the courts.

Conclusions on this request

In the light of the evidence I have referred to, I have concluded;

- that this request could be fairly seen as obsessive;
- that your correspondence was harassing and causing distress to staff;
- that complying with the request would impose a significant burden
- was designed to cause disruption and annoyance; and
- lacked serious purpose or value.

I am satisfied that the pattern to your communications with the Commission and website postings show that your request is part of a wider campaign to disrupt the Commission, in using the request as a means of challenging the Council's actions. This has continued despite advice concerning the appropriate channels you could pursue. If the true purpose of a request is to argue, address a grievance or further a dispute rather than seek information, then that can be regarded as a vexatious request.

Latterly, your phone calls concerning your requests have taken up a significant amount of time, some lasting more than 30 minutes, where you repeat issues on which responses have already been provided. These calls, that until recently were daily, imposed a significant burden on the Public Enquiries team.

Your request is also burdensome because any response provided is likely to lead to further requests and complaints. I base this on the evidence of the Commission's involvement to date with your requests. Although eight requests have been made since September 2009 (including your Subject Access Request and one being withdrawn), each request has given rise to numerous further emails and telephone calls.

When looking at the totality of your requests and correspondence, it is evident that the Public Enquiries Team has spent a wholly disproportionate amount of time and public resources dealing with your communications, requests and complaints. I have accorded considerable weight to this factor.

I have also considered your request in the light of it being harassing or distressing. The volume and frequency of your correspondence and the tenor of it, namely that you would make matters easier for the team if you were met with some cooperation in resolving your complaint with the Council, would be regarded by a reasonable person as being harassing or distressing.

In addition to your communications, I have taken into account independent evidence which I have referred to, namely, comments posted on a website. These demonstrate you have clearly evinced an intention to use the request process as a lever, to bring about results that you feel the Commission can achieve for you. This evidence I have referred to in demonstrating the burden imposed on the Commission and also shows that the request lacks genuine or serious purpose in seeking information.

I am also able to conclude that the same evidence can reasonably lead me to say that your request and communications are designed to cause disruption or annoyance to the Commission. I feel you have acknowledged this in your actions in agreeing to withdraw requests if the Commission or auditors took a particular course of action. You have also continued this pattern by substantially repeating a request that you had withdrawn after the decision to treat this request as vexatious and to which I have referred at the end of this letter.

In the light of the advice you have received that the Public Enquiries team cannot assist in matters relating to auditors or the actions of the Council, I am of the view your request is now obsessive. This is because you have persisted in using the request as a means to publicise issues that cannot be considered by the Commission. Indeed, your request for an internal review focuses on your complaints that relate to auditors and other requests to the Commission, rather than explaining your actions in respect of this request in response to the decision your request was vexatious. However, in view of my conclusion that your request already satisfies other categories as a vexatious request I do not place great weight on this factor.

I have fully reviewed the request, and Shaun Kavanagh's response. I believe he was correct to apply section 14(1) of the Freedom of Information Act; however, as I have already said in his response he should have gone further to explain the reasons why this applied.

I'm sorry that this is not the response you may have been expecting but hope my explanation has provided some clarity.

If you remain unhappy you can appeal to the Information Commissioner. Details of how to do this can be found in the 'Access to Information – Complaints Process' which I have attached to my email.