

Freedom of Information Act 2000 ('FOIA')

Decision notice

Date: 29 June 2017

Public Authority: Cornwall Inshore Fisheries and Conservation Authority

Address: Chi Gallos
Hayle Marine Renewables Park
North Quay
Hayle
Cornwall
TR27 4DD

Decision (including any steps ordered)

1. The complainant has requested information relating to fishermen's submitted catch returns. The Commissioner's decision is that Cornwall Inshore Fisheries and Conservation Authority has correctly applied the provision for vexatious requests at section 14(1) of the FOIA. She does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

2. On 29 September 2016 the complainant wrote to Cornwall Inshore Fisheries and Conservation Authority ('CIFCA') and requested information in the following terms:

"How may [sic] fishermen in the Cornwall Inshore Fisheries District were late in submitting their catch returns for May 2016?

How may [sic] fishermen in the Cornwall Inshore Fisheries District were late in submitting their catch returns for June 2016?

How may [sic] fishermen in the Cornwall Inshore Fisheries District were late in submitting their catch returns for July 2016?

How may [sic] fishermen in the Cornwall Inshore Fisheries District were

late in submitting their catch returns for August 2016?

How many of those fishermen in the Cornwall Inshore Fisheries District who were late submitting their catch returns during the above four month period, were issue with Financial Administrative Penalty notices?

How many of those fishermen in the Cornwall Inshore Fisheries District who were late submitting their catch returns during the above four month period, were issue with cautions?

How many of those fishermen in the Cornwall Inshore Fisheries District who were late submitting their catch returns during the above four month period, were prosecuted?"

3. CIFCA responded on 3 October 2016 and refused to provide the requested information on the basis that the request is vexatious under section 14(1) of the FOIA.
4. On 5 October 2016 the complainant expressed dissatisfaction with the response.
5. Cornwall Council¹ provided an internal review on 10 October 2016 in which it maintained the original position regarding the application of section 14(1) of the FOIA.

Scope of the case

6. The complainant contacted the Commissioner on 29 November 2016 to complain about the way his request for information had been handled.
7. The Commissioner has considered whether CIFCA has correctly applied section 14(1) of the FOIA to the above requests for information made on 29 September 2016.

¹ Cornwall Council provides support to CIFCA and undertook the internal review in this case and responded to the Commissioner's enquiries on behalf of CIFCA.

Reasons for decision

8. Section 14(1) of FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
9. The term 'vexatious' is not defined in the legislation. In *Information Commissioner vs Devon County Council & Dransfield*², the Upper Tribunal took the view that the ordinary dictionary definition of the word vexatious is only of limited use, because the question of whether a request is vexatious ultimately depends upon the circumstances surrounding that request. The Tribunal concluded that 'vexatious' could be defined as the "...manifestly unjustified, inappropriate or improper use of a formal procedure" (paragraph 27). The decision clearly establishes that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.
10. In the *Dransfield* case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) and harassment or distress of and to staff. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed the

"importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).
11. The Commissioner therefore needs to consider whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to the serious purpose and value of the request.
12. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in her

² UKUT 440 (AAC) (28 January 2013)

published guidance on vexatious requests³. 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 a case will need to be considered in reaching a judgement as to whether a request is vexatious.

13. In relation to the serious purpose and value of the request, the complainant said to the Commissioner that it was made to discover what evidence CIFCA had relied upon in deciding to fine a local fisherman £2000. In his correspondence to CIFCA, the complainant said the following:

"Given that my request forms part of an investigation into an alleged abuse of public office and an alleged misconduct in a public office by one or more Cornwall IFCA officers, the request is justified, appropriate, involves the proper use of a formal procedure and has an entirely reasonable "foundation for thinking that the information sought would be of value to the requester or to the public or to any section of the public".

While I understand that IFCA will have found the information released thus far as a result of my continuing investigation and FoIA requests profoundly embarrassing, showing as it does, the victimization of one fisherman (against whom a current IFCA officer lost a previous court case) and the extraordinary and disproportionate use of fisheries law against that individual fisherman, while countless hundreds of others who have committed the same or similar offences without sanction, that is not in itself reasonable grounds to refuse my request...

...I note that I have still not received a reply to my request that IFCA furnish me with the evidence upon which basis [named fisherman] has been forced to pay a fine of £2000. Had IFCA complied with my entirely reasonable request for this evidence and having, as you know, been authorised by [named fisherman] to obtain it, it would not have been necessary for me to have sought the information from IFCA using the provisions of the FoIA."

14. As way of background and in order to provide context and history, CIFCA explained that the complainant was acting as an 'advocate' for

³ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

the fisherman who had recently received an offer of a Financial Administrative Penalty for fishing offences as an alternative to prosecution in court. CIFCA said that this was a legal matter personal to the fisherman and that his only redress was via the courts but rather than advise the fisherman to take this route, the complainant sought to disagree with CIFCA's offer of the penalty and accuse officers of wrongdoing.

15. CIFCA explained that the request in this case was the seventh in two and a half months, all of which related to the investigation of the fisherman and subsequent enforcement action taken. It said that when the fifth request was received, the complainant was reminded that there was a maximum amount of time that could be spent on requests before costs were incurred. CIFCA said that the complainant was of the view that it should therefore consider all his requests separately as none of them on their own would cost more than the £450 threshold and was also unhappy that, for some of the data, it directed him to the place where this was held in the public domain.
16. The Commissioner was informed that the amount of time recorded by CIFCA in dealing with the complainant and his requests amounted to 251.35 hours, and that this is excluding legal officer time spent dealing with the matter.
17. CIFCA said that in dealing with fishing and environmental matters, it is always keen to ensure that it assists requestors wherever possible, hence the excess time that was spent on this. However, it also said that as the number of requests and time spent shows, the complainant's requests were having a disproportionate effect on it.
18. It was further submitted that the complainant is highly argumentative and has his own interpretation of the law, which he expects others to follow and will not accept another point of view. CIFCA said that this has compounded the time spent on the requests still further and, whilst the time is not shown, the complainant and the fisherman on his own have continued to complain to the authority. It has repeatedly advised both that if, as they allege, there is abuse of public office, they are free to seek their own legal advice or to address their concerns to the Local Government Ombudsman. It said that it is not aware that any such referral has been made.
19. As stated in paragraph 11, the Commissioner needs to consider whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to the serious purpose and value of the request.

20. Although the requests in this case don't appear to be particularly onerous when considered in isolation, the Commissioner agrees with CIFCA's position that complying with these requests, when combined with the previous requests, would place a burden on the authority.
21. The Commissioner has considered the purpose and value of this request and regards it as enabling the complainant to fully understand the situation regarding the enforcement action taken against the fisherman. As stated in paragraph 13, the complainant has said that if CIFCA had complied with his request for the evidence upon which basis the fisherman has received a fine of £2000, it would not have been necessary for him to seek the information using the provisions of the FOIA. CIFCA explained to the Commissioner that the request for evidence was refused as being exempt under sections 30(1)(a) and 40(2) of the FOIA (such exemptions relate to investigations and proceedings conducted by public authorities and third party personal data). It said that the fisherman subsequently made a subject access request under the Data Protection Act 1998 which was fully complied with.
22. Given that the fisherman's subject access request was complied with, and that the complainant is the fisherman's advocate and therefore highly likely to be provided with such information by the fisherman, the Commissioner considers that purpose and value of the requests in this case is significantly reduced.
23. The Commissioner considers that CIFCA can establish a case for saying that the request seeks to reopen an issue which has an alternative route of redress via the courts or the Local Government Ombudsman. Not pursuing such routes, and instead making numerous requests for information, can be seen as an inappropriate use of formal procedure, and limits the value of the request in this case.
24. The Commissioner also notes that in the internal review, Cornwall Council said that the complainant is making unfounded accusations. Unfounded accusations can be seen as an "indicator" which may be useful in identifying vexatious requests as referred to in paragraph 12.
25. When considered in the context and history of this case the Commissioner does not consider that the purpose of the requests justifies the disproportionate effect on the authority. CIFCA has explained how responding to the requests would be a burden when combined with the time already spent dealing with the issue. Given CIFCA's position that the complainant has his own interpretation of the law and will not accept another point of view, it is also likely that providing the requested information would not satisfy the complainant and would be likely to result in further correspondence, rather than

bringing an end to the issue. She considers that the complainant may use the requested information to create further points of dispute which could be tangential to the core issues. The Commissioner has taken into account that the subject access request made by the fisherman has been fully complied with and that there are alternative routes of disputing the fine which reduces the serious value and purpose of the requests. The Commissioner can understand how responding to these requests, when coupled with previous dealings on the same matter, would cause a disproportionate burden on CIFCA.

26. Returning to the findings of the Upper Tribunal in Dransfield, and its view that a holistic and broad approach should be taken in respect of vexatious requests, the Commissioner has decided that CIFCA was correct to deem the request vexatious. Accordingly she finds that section 14(1) of the FOIA is engaged.

Right of appeal

27. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

28. 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.
29. 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

Deborah Clark
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