

Town Hall
St Nicholas Street
Scarborough
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Tel: 01723 232323



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SCARBOROUGH BOROUGH COUNCIL

Mr T Hicks

Your Ref:
Our Ref: FOIA 6079

1 October 2018

By email: timhicks@pt.lu

Dear Mr Hicks
Freedom of Information Act 2000 section 14(1)
Vexatious or Repeated Requests

I write with reference to your request for information which has been dealt with under the Freedom of Information Act 2000 (FOIA).

Following consideration of your request, I am writing to inform you that it has been determined vexatious pursuant to section 14(1) of the FOIA.

This is therefore a refusal notice under **s.14(1) of the FOI - Vexatious or Repeated Requests**

Section 14(1) of the FOIA states:

Section 1(1) [of the FOIA] does not oblige a public authority to comply with a request for information if the request is vexatious.

In compiling this response the Council has taken into account the Information Commissioner's Office (ICO) guidance 'Dealing with vexatious requests' ('the Guidance') which can be accessed via the ICO website at www.ico.org.uk

The Council has also taken into account the Upper Tribunal case of *Information Commissioner v Devon County Council & Dransfield [2012] UKUT 440 (AAC), (28 January 2013)*, hereinafter referred to as 'the Dransfield case'. The full judgement in the Dransfield case can be accessed at www.bailii.org/uk/cases/UKUT/AAC/2013/440.html

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Within the Guidance the following is stated:

120. There is no obligation to explain why the request is vexatious. Nonetheless, authorities should aim to be as helpful as possible. The ICO considers it good practice to include the reasoning for the decision in the refusal notice.

121. However, we also appreciate that it may not be appropriate to provide a full explanation in every case. An example might be where the evidence of the requester's past behaviour suggests that a detailed response would only serve to encourage follow up requests.

Although it is clear that there is no requirement for the Council to provide an explanation as to why your requests are vexatious, I am setting out a succinct rationale for the same. I have purposefully avoided providing a lengthy explanation as to my mind this would only serve to encourage further requests from you.

The main consideration when determining whether requests are vexatious is proportionality, specifically whether those requests are likely to cause a disproportionate and unjustified level of disruption, irritation and distress.

Set out within the Guidance are various considerations, all of which have been taken into account. Rather than repeat parts of the Guidance in this letter, I suggest that you access the Guidance yourself and read through the same. Given your use of email and the internet, I have assumed that you are able to access the ICO website.

Your involvement and active participation in the activities of a campaign group, whose stated aim is (inter alia) to cause nuisance and disruption to the Council, has been taken into account, and in this respect I refer you to page 23 of the Guidance headed 'Campaigns'.

Articles, stories and other contributions to the website used by yourself and the campaign group raise personal attacks against Council Officers, Elected Members, and others associated with Scarborough Borough Council. The content is often offensive, accusatory, defamatory, and partial.

The collective requests and correspondence from those who participate in this campaign group have over a number of years caused disruption, irritation and distress, as well as having a significant impact upon the Council's already stretched resources.

I acknowledge that you and your fellow campaign group contributors have stated (and will state) that your requests and activities are very much in the public interest. Although there is no public interest test involved as part of section 14(1), I feel it necessary to address this position briefly.

The public have an interest in the activities, requests and allegations made by yourself and the campaign group to promote:

- transparency and accountability of the Council;
- greater understanding and awareness;

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- a free exchange of views; and
- more effective public participation in decision making.

All of the above can be said to contribute to better local government. It is fair to say that a number of the 'issues' raised by yourself and the campaign group against the Council would be of public interest, as would any allegation of impropriety, illegality or malpractice, regardless of whether there was valid and cogent evidence to support the same. However when considering the public interest, what is required is more than a mere suggestion of wrong-doing or malpractice. Information that yourself and the campaign group do claim to have is combined with conjecture to reach unpleasant and defamatory conclusions set out in articles and offered up for further defamatory comments from the world at large via the internet.

The public also have an interest in ensuring that:

- the Council, its Members and Officers are protected from exposure to disproportionate burden, or to an unjustified level of distress, disruption or irritation in handling information requests;
- Council resources are used efficiently and properly, and that unreasonable requests and correspondence do not result in a strain upon resources which gets in the way of the Council delivering mainstream services or answering other requests and correspondence;
- Officers and Elected Members are not subjected to harassment;
- the FOIA and EIR are not the subject of misuse; and
- the democratic process and the involvement of the community in decision making is maintained and protected.

As has been stated previously, requests and correspondence received from the campaign group place a significant burden upon limited Council resources. They cause distress, disruption and irritation, and are disproportionate and unjustified. Historically, where the Council has responded and/or provided information, this leads to further requests and correspondence. This is so even where Senior Management (and various Members) have met personally with members of the campaign group to discuss their issues.

You are clearly part of this campaign group and you have stated that you intend to forward the FOI request to the NYE in due course. You have already published an article on the North Yorkshire Enquirer website based on your request. Disruption, irritation and distress to the Council, its Members and Officers results from this behaviour regardless of any argument that the issues you or they cover are raised in the public interest.

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Even more concerning is the impact the campaign group's activity is having on the democratic process, and the willingness of members of the community to get involved with, and stand for election to, both Parish and Borough Councils. There is a genuine fear amongst those interested in such public roles that they will be subjected to abuse, defamation, harassment and distress. The Council is aware of potential candidates who have withdrawn from the democratic process, and those who have stood down from positions serving their community as a direct consequence of these activities.

This Council accepts and supports the right to freedom of speech, however this right is not absolute and is subject to any lawful constraints set out in the substantive law (for example laws against defamation, harassment, malicious communications etc.). The activities and behaviour of the campaign group go beyond what is acceptable in law, and run contrary to the very strong public interest in maintaining and ensuring participation in the democratic process.

In this context the Council believe that your request (and associated correspondence) is vexatious, and is likely to cause a disproportionate and unjustified level of disruption, irritation and distress, as well as having a significant impact upon the Council's already stretched resources.

Review

If you are unhappy with the service you have received in relation to your request and wish to make a complaint or request a review of our decision, you should write to Freedom of Information, Scarborough Borough Council, Town Hall, St Nicholas Street, Scarborough, North Yorkshire, YO11 2HG or email foi@scarborough.gov.uk

If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner for a decision. Generally, the Information Commissioner's Office cannot make a decision unless you have exhausted the complaints procedure provided by Scarborough Borough Council. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF | Tel: 0303 123 1113 | Fax: 01625 524510 | Web: www.ico.gov.uk.

Yours sincerely

FOI Officer

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