

**Freedom of Information Act 2000 (FOIA)  
Environmental Information Regulations 2004 (EIR)  
Decision notice**

**Date:** 10 January 2013

**Public Authority:** Wolverhampton City Council  
**Address:** Civic Centre  
St Peter's Square  
Wolverhampton  
WV1 1SH

**Decision (including any steps ordered)**

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1. The complainant requested information regarding the front boundary lines of properties on the road where he resides.
2. The council refused to comply with the request on the basis of regulation 12(4)(b) of the Environmental Information Regulations (EIR).
3. The Commissioner has concluded that the request is manifestly unreasonable and that the council is entitled to rely on regulation 12(4)(b) to refuse to provide the requested information.

**Background**

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4. The complainant is a tenant of a council property. The boundary between his property and the house next door is described by the council as a 'dog leg'. There was also an identical 'dog leg' boundary between the house next door and its neighbouring house. In 1993, the complainant requested that a fence be erected between his property and his neighbour, but this was refused. In 1998 the property adjoining the complainant and its other neighbouring house agreed to straighten the boundary between their properties. One of these properties was subsequently bought under the right to buy. The council states that the arrangement had no material effect on the boundary between the complainant's property and his neighbour but the

complainant is of the belief that other residents were given preferential treatment when the boundary agreement was reached, and that this may have been linked to possible family connections with the council.

## Request and response

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5. On 3 April 2012, the complainant wrote to the council and requested information in the following terms:

*'Could I please find the answers to the following?*

*When the above property – [named property] was laid out/constructed circa 1971 – and therefore the estate it was constructed on, "front boundary lines" between the properties were laid out. Could Wolverhampton city council supply me with the "front boundary lines" between the properties – [two named properties] at (sic) 1971.*

*1.1 If no such paperwork exists IN WHATEVER FORM please say so!*

*2. if the "front boundary lines" were incorporated within the original tenancy agreement (that of the original tenant and the council in force at the time) of [named property] could Wolverhampton city supply me with a copy of the original tenancy agreement – circa 1971 - and **ANY** and **ALL** ancillary paperwork attached to the said tenancy agreement.*

*2.1 if no such paperwork exists IN WHATEVER FORM, please say so!*

*3. Does Wolverhampton city council have a copy of the "front boundary lines" between [named property and named property] – circa 1971 – in **ANY FORM** whether that form be a map, drawing, sketch, picture, diagram, illustration, plan, title deed, hardcopy, microfiche etc., etc?*

*3.1 If no such map, drawing, sketch, picture, diagram, illustration, plan, title deed, hardcopy, microfiche etc., etc exists IN WHATEVER FORM, please say so" (sic)*

*4. Does Wolverhampton city council have in its possession **ANY** map, drawing, sketch, picture, diagram, illustration, plan, title deed, hardcopy, microfiche etc., etc prior to the tenant of [named property] purchasing the property off the then council – circa 1998 – of the "front boundary lines" between [named property and named property]?*

*4.1 If no such map, drawing, sketch, picture, diagram, illustration, plan, title deed, hardcopy, microfiche etc., etc exists IN WHATEVER FORM, please say so! (sic)*

5. *If Wolverhampton city council does not have in its possession any of the above information but knows of an outside body that may have such information of the "front boundary lines" – circa 1971 and circa 1998 – between [named property and named property], could they please pass the outside body details on to me?*

*5.1 If no such body exists please tell me!*

*5.2 If no such information exists IN WHATEVER FORM, please say so!*

6. *Was there ANY paperwork that exists (that includes - but not an exhaustive list – a map, drawing, sketch, picture, diagram, illustration, plan, title deed, hardcopy, microfiche etc., etc.) relating to the "front boundary lines" transferred to Wolverhampton homes when they (Wolverhampton homes) became responsible for the council housing stock.*

*6.1 If no such information exists IN WHATEVER FORM, please say so!*

7. *If the "front boundary lines" were incorporated within my tenancy agreement (that of the council in force at the time) of [named property], could Wolverhampton city council supply me with a copy of the tenancy agreement – circa 1987 – and **ANY** and **ALL** ancillary paperwork attached to the said tenancy agreement?*

*7.1 If no such information exists IN WHATEVER FORM, please say so!*

*Basically, I am trying to find out ANY and ALL details relating to the "front boundary lines" – NO MATTER WHAT FORM THOSE DETAILS MAY TAKE – between [named property and named property] for the dates mentioned above.*

*If I could request you answer each question individually, so that your answers are **CLEAR AND PRECISE** and no **VAGUENESS OR AMBIGUITY OR MISINFORMATION** can be accredited to your answers, AND ignore what has transpired previously – because it has no bearing on this subject/request – I would be extremely grateful.'*

6. The council responded on 4 July 2012 and acknowledged its late response. It refused to provide the requested information stating that the request was 'manifestly unreasonable' and citing regulation 12(4)(b) of the EIR.
7. The complainant asked for a review on 12 July 2012 but the council refused to carry one out.

## **Scope of the case**

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8. The complainant had contacted the Commissioner on 31 May 2012 to complain about the way his request for information had been handled.
9. The Commissioner considers the scope of this investigation to be whether the council was correct to refuse to provide the requested information because it was 'manifestly unreasonable'.

## **Reasons for decision**

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### **Is the information environmental?**

10. The Commissioner is of the view that the information requested by the complainant is environmental information, as defined in regulation 2(1)(c) of the EIR and that a previous similar request with the same complainant was dealt with under the EIR, both by the Commissioner and at Tribunal.

### **Regulation 12(4)(b) – manifestly unreasonable**

11. This regulation of the EIR allows a public authority to refuse to comply with a request if it is deemed to be manifestly unreasonable. The factors that the Commissioner takes into account when determining whether a request is manifestly unreasonable are to a large degree the same factors which he would take into account in determining whether a request is vexatious under FOIA. However, regulation 12(4)(b) is a qualified exception and therefore subject to the public interest test.
12. The Commissioner's guidance on section 14(1) of FOIA makes it clear that it is the request, not the requester, that must be vexatious. The same principle applies when determining whether a request is manifestly unreasonable. A public authority cannot judge a request to be vexatious or manifestly unreasonable just because the individual concerned has caused problems in the past. However, the past behaviour of the requester has relevance if the request continues the same pattern of behaviour.

13. As explained in his guidance<sup>1</sup>, the Commissioner's general approach is to consider the argument and evidence that the public authority is able to provide in response to the following questions:
- Could 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 in terms of expense and distraction?
  - Is the request designed to cause disruption or annoyance?
  - Does the request lack any serious purpose or value?
14. It is not necessary for all of the above criteria to apply but in general, the more that apply, the stronger the case for a vexatious request will be. The Commissioner is able, as stated in paragraph 12 above, to take into account the history and context of the request when determining whether a request is vexatious. A request for information may only reveal its vexatious quality when put into context.

### **Could the request fairly be seen as obsessive?**

15. When a request for information is refused as vexatious, it is often the case that an examination of the background will reveal a long and difficult relationship between the parties that has arisen as a result of a dispute or a number of related disputes that, for whatever reason, have never been resolved to the satisfaction of the complainant.
16. The council states that, over the last 12 years, the complainant has gone through the council's internal complaints procedures, complained to the council's standards committee, the ICO, the Information Tribunal, the Local Government Ombudsman and the Standards Board for England. The council explains that the Standards Board for England found no grounds for investigation and the Local Government Ombudsman declined to investigate the complaint.

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<sup>1</sup> Guidance on the Commissioner's approach to vexatious requests can be found on the Commissioner's website and for ease of reference, at the following link:  
[http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/detailed\\_specialist\\_guides/awareness\\_guidance\\_22\\_vexatious\\_and\\_repeated\\_requests\\_final.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/awareness_guidance_22_vexatious_and_repeated_requests_final.pdf)

17. Between 2004 and 2010 the complainant wrote to council staff and the Information Tribunal using specially designed stationery described below in paragraph 20. The complainant wrote to the Commissioner with the same stationery. The Commissioner considers that there is a level of persistence in the requests that is out of proportion to the original dispute that initiated them and that the method the complainant employs is detrimental to the possibility of resolution. Past behaviour would indicate that, even if this particular request had been responded to, the complainant is likely to persist in making further repetitive requests.

**Is the request harassing the authority or causing distress to staff?**

18. The Commissioner would like to highlight the fact that he is not concerned with what the complainant's intention may have been when considering this question. It is not unusual for a request to be deemed vexatious even though the complainant genuinely believes that the request and their behaviour were entirely justified. Instead, the Commissioner is concerned with the effect that the request would have had on any reasonable public authority.
19. The council's contention is that the complainant uses a style of stationery which has been designed to harass its employees. He employs offensively headed stationery that he continues to use, despite warnings from the council that it will not engage with him if he continues to do so. This correspondence appears to be solely designed to cause distress to council staff.
20. The letterhead on which the request of 3 April 2012 was written contains the following:
- The use of the complainant's locality with the word "...gate" and a direct reference to 'Watergate', and by implication, corruption.
  - The linking of the council's name with the word "corrupt". The complainant uses this adjective repeatedly in his correspondence.
  - He refers by name to council employees and councillors in a derogatory fashion.
  - The complainant uses the word 'CABAL' to indicate a secretive or conspiratorial group in describing the council.
  - The complainant has a special email address which includes the words 'corrupt council'.

21. He also has a website designed exclusively to expose the corruption that he believes to be endemic in the council. One example from this website is as follows:

*"FIRST AND FOREMOST THE ONE THING THE READER OF THIS SITE NEEDS TO UNDERSTAND IS THAT FROM THE OUTSET I - UNLIKE THE LOUSY LOW-LIFE SCUMBAG B\*\*\*\*\* INVOLVED IN THIS MATTER - WAS UPFRONT AND HONEST."*

There are sections with headings such as 'Liars and Deceivers' which includes council staff.

22. The Commissioner accepts the council's argument that the request forms part of an ongoing attempt by the complainant to harass its employees and he considers this to be irrefutable when considering the choice of stationery and words that he uses.

**Would complying with the request impose a significant burden in terms of expense and distraction?**

23. The council has not calculated the likely cost of responding to this request and has not presented an argument that compliance would create a significant burden. However, the council has been unable to consider responding because the request is emblazoned with offensive, potentially defamatory and harassing comments. If the request had been sent without these comments, the council states that it would have been prepared to consider a response.
24. The council argues that it has to take into account the possible future distraction and ensuing correspondence that would be likely to flow from any response being made. The Commissioner agrees that the context within which this request has been sent indicates a likelihood that more officer time would be taken if a response had been made. The history of the complainant's dealings with the council suggests a strong possibility that any response would simply provoke further requests on the same subject.

**Is the request designed to cause disruption or annoyance?**

25. The council states that it has asked the complainant not to use the specially designed stationery when writing to it. However, the complainant has made his intent clear by saying in correspondence to the council on 12 July 2012 that he would continue to use this offensive style of communication until a court order prevents him from doing so. On this basis the council considers that the request is designed to cause annoyance.

26. It is clear that the complainant intends to cause disruption and annoyance to the council by his method of correspondence which he says himself he has been using for 12 years. He considers it to be a denial of freedom of expression according to the Human Rights Act to suggest that he use a more considered and appropriate form of correspondence.

**Does the request lack any serious purpose or value?**

27. The council states that the complainant's purpose seems to be an attempt to expose improper behaviour on the part of council officers and elected members. The council believes that these allegations are unsubstantiated and based on the complainant's interpretation of comments that were made to him in response to a verbal enquiry. It is the council's position that, even if the allegations were substantiated, no harm has been caused to the complainant or any third party. Therefore, the council has concluded that the request seeks to revisit issues surrounding boundary plans that date back to 1971 and therefore has no merit. However, the complainant disputes this, saying that his interest in these matters dates back to 2001 when he first became aware of the corruption he believes existed in relation to the boundary lines of nearby properties.
28. The Commissioner has concluded that any serious purpose or value that the request may have had historically has been undermined by the refusal of the complainant to present his request/s in an appropriate manner.
29. For the reasons set out above the Commissioner is therefore satisfied that the complainant's request of 3 April 2012 was manifestly unreasonable. The council is thereby entitled to refuse to comply with it on the basis of regulation 12(4)(b) of the EIR.

**Public interest test**

30. However, the exception is qualified and therefore subject to the public interest test. This means that even if the request is manifestly unreasonable, information can only be withheld if the public interest in maintaining the exception outweighs the public interest in disclosing the information.
31. There are important reasons why this exception exists under the EIR. Both the FOIA and the EIR give the public unprecedented rights to access recorded information held by public authorities. In exercising those rights, members of the public must be responsible. It was not the intention of the legislation that compliance with requests would impinge disproportionately and unfairly on the many other important



duties that public authorities have to carry out, often with limited resources in place. Similarly, it is not the intention of the legislation to allow members of the public to pursue grievances against public authorities to a disproportionate extent.

32. The Commissioner accepts that the purpose of this request is to continue a campaign of hostility towards the council and its employees. The council has characterised this as a private arrangement between two parties 15 years ago which the council states has not caused the complainant any detriment or injustice, despite which the complainant feels the need to uncover the 'truth' behind this arrangement. It may be that the complainant believes that this issue has impacted on him but the Commissioner agrees that, as this matter has been festering for so long, it is unlikely to be resolved by a response to this request. The Commissioner is satisfied that the public interest favours maintaining the exception and that there is no discernible public interest in favour of disclosure that would outweigh the fact that it is manifestly unreasonable.

### **Regulation 14(2)**

33. Regulation 5(2) of the EIR states that when a public authority receives a request for information it must make the requested information available within 20 working days after the date of receipt of the request.
34. Regulation 14(2) of the EIR states that:

*"The refusal shall be made as soon as possible and no later than 20 working days after the date of the request."*

The Commissioner has found a breach of regulation 14(2) as the council did not provide a refusal notice to the complainant, citing the exception found at regulations 12(4)(b), within the statutory timeframe.

## Right of appeal

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35. 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: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

36. 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.
37. 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**