

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

Decision notice

Date: 30 March 2017

Public Authority: Huntingdonshire District Council
Address: Pathfinder House
St Mary's Street
Huntingdon
Cambridgeshire
PE29 3TN

Decision (including any steps ordered)

1. The complainant has requested information relating to complaints registered on specific enforcement files. The Commissioner's decision is that Huntingdonshire District Council has correctly applied the exception for manifestly unreasonable requests at regulation 12(4)(b) of the EIR. She does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

2. On 23 February 2016, the complainant wrote to Huntingdonshire District Council ('the council') and requested information in the following terms:

"Details of the reference numbers, specific nature, and dates of occurrence, of all complaints registered on enforcement files 0900365ENCARA. 1000278ENBOC AND 1400031ENBOC, together with details of action taken, advice given, or conclusions made by the enforcement team at HDC in consideration of the complaints, together with the details of the responses made by HDC to all complainants at the conclusion of the investigations."
3. The council responded on 21 April 2016 (quoting the reference number 4858) and refused to provide the requested information citing the exceptions at regulation 12(4)(b), 12(5)(b) and 12(4)(e) of the EIR.

4. The council provided an internal review on 27 June 2016 in which it revised its position, retracting its reliance on the exceptions at regulations 12(5)(b) and 12(4)(e) but maintaining its reliance on the exception for manifestly unreasonable requests at regulation 12(4)(b).

Scope of the case

5. The complainant wrote to the Commissioner on 10 September 2016 to complain about the way his request for information had been handled.
6. The Commissioner has considered the council's application of Regulation 12(4)(b).

Reasons for decision

Regulation 12(4)(b) – manifestly unreasonable

7. Regulation 12(4)(b) of the EIR provides that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable.
8. The council said that the request in this case is manifestly unreasonable due to its vexatious nature.
9. The Commissioner recognises that, in practice, there is no material difference between a request that is vexatious under section 14(1) of the FOIA and a request that is manifestly unreasonable on vexatious grounds under the EIR. The Commissioner has therefore considered the extent to which the request could be considered as vexatious.
10. The term 'vexatious' is not defined in the legislation. In *Information Commissioner vs Devon County Council & Dransfield*¹, 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

¹ UKUT 440 (AAC) (28 January 2013)

establishes that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.

11. 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).

12. 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.
13. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests². 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.
14. The council explained that the requested information relates to the complainant's neighbour and spans seven years (from 2009 to the date of the request). It said that all complaints, except one, were made by the complainant and that most of the information sought is already available to the complainant as he has been informed of how the council has handled his complaints, including details of actions taken regarding his complaints throughout the process, and has been informed where action hasn't been taken.

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

15. The council informed the Commissioner that it said that it has never treated the complainant's claims lightly and has always sought to investigate them as fully as possible. It said that the contents of the files have been very well debated by the council and independent observers and explained that the complainant has made a complaint to the Local Government Ombudsman and applied for Judicial Review in the Planning Court and those processes have established that the council has acted properly or have been rejected as without merit. It said that the fact that these legal processes preceded some of the complaints does not have a bearing on the reasons presented here because it is not the council's position that the complainant has already had access to the requested information via these means, but that his stated intent to scrutinise the activities of the council has already been undertaken by the relevant bodies and therefore the request is vexatious because it has little or no value.
16. The council also drew the Commissioner's attention to the increasingly abusive tone the complainant has used towards council officers. It said that his correspondence includes accusations that officers have lied, of personal hatred against him, of biased and prejudiced actions, and of misconduct and corruption. It set out the following examples of this in its internal review response:

22 February 2016 email to Enforcement Office:

"...my strongly held conviction that there has been a very well co-ordinated effort by HDC [name redacted], [name redacted], PC [name redacted], your friend [name redacted] and others to cause me as much harm as possible by unlawful means, and for no reason other than to satisfy personal grudges and to indulge a proven liar and a cheat."

11 April 2016 email to Head of Planning:

"...this letter will provide fine detail of your corruption, your lies and your unlawful and predetermined conspiratorial stich up which was assisted to an unlawful conclusion by [name redacted] and [name redacted] [enforcement planning officers]...let's see if you have a convincing answer to the lies told by [name redacted] in her report...there must be an answer and one word will cover it. Corruption!"

22 December 2011 to Planning Officer:

"Have no fear you will be held to account sooner or later. You imagine you make the rules, but you don't...you are supposed to uphold the rules instead you cowardly allow the planning laws to be trampled over

because you are a typically weak public servant or should I say sycophant. Remember this you have had it all your own way so far...as indeed has [name redacted]. Nothing is forever and nothing stays the same. Your mate the ex copper [name redacted] [enforcement officer HDC] is a liar and a cheat as are you. What a mug you are you are indeed the worst of the worst but the one thing that I can count on is that you are gutless and will throw the towel in sooner or later."

17. The council noted that whilst this seems to be borne out of the complainant's frustration with perceived injustices, it does not deem it acceptable for its employees to be subject to such threatening, abusive and potentially libellous attacks. The council informed the Commissioner that because of this approach, the complainant is considered a persistent complainant, as per the council's policy. It said it believes that fulfilling this request would be likely to result in further abusive behaviour from the complainant and therefore the request is vexatious due to the unjustified detrimental impact on its officers. The Commissioner notes that the complainant's initial communication to her refers to the council a 'devious collection of crooks', a 'well oiled, manipulative and cohesive force' and 'a devious, unaccountable and manipulative council'.
18. The council also said that whilst the cost element is not its main concern, responding fully to the request would involve a significant number of officer hours. The council's Planning Enforcement Team said that between February 2014 and August 2016 (when the complainant was designated as a persistent complainant by the council's Corporate Office) 125 complaints were received from the complainant in relation to his neighbour's site. It explained that to go back to square one and obtain all the requested information, including internal correspondence regarding the complaints, would render the impact of fulfilling the request disproportionate given that the complainant has already received information on how his complaints have been handled. It said that the burden involves the consideration of the application of exceptions to disclosure, such as the exception for personal data, to every page in the complaint files and would involve an unreasonable diversion of resources away from core tasks.
19. The complainant explained that he lives opposite a Gypsy site in a previously isolated house and that the Gypsy family moved onto the greenfield site opposite his home in 2009 originally in defiance of six refusals of planning consent. He said that they now have permanent planning consent to live there but because of the situation of the site in open countryside there are a number of site conditions attached to its occupancy which are routinely breached by the family which has led him to make many complaints which include noise, nuisance, pollution and loss of his residential amenity.

20. The complainant has stated that the purpose of the request is not to re-run the issue regarding the planning consent granted in 2013. He said that many of his complaints have not been answered or acknowledged and that he is requesting the information to see if the complaints have been properly recorded and processed in accordance with policy. He also refers to the 'considerable discrepancy' between statements made to him by a Planning Enforcement Officer in 2010, that there has been a proven breach of planning control, and the statement made in 2013 to the planning committee which states that there had not.
21. The Commissioner asked the council to comment on the complainant's position as described in the preceding paragraph. Its reply said that the Planning Enforcement service is subject to both internal audit and the council's Scrutiny Committee, as with all services and that the Ombudsman report showed, in the cases it investigated, that this service was operating appropriately. It also said that it is not possible to assess the merit of the accusation of 'considerable discrepancy' between the officer and committee statements without further evidence from the complainant on the specific claim and that, in any case, it is not clear how this may affect the reasons given for considering the request vexatious. The Commissioner understands that the complainant believes that breaches of planning conditions can be sufficiently demonstrated so that enforcement action can be taken and that release of the information requested in this case will prove that. Whilst it is not for the Commissioner to establish whether the council should have taken further enforcement action, she does acknowledge that the request for enforcement files does have a serious purpose.
22. The complainant also informed the Commissioner of problems with the judicial review, the Local Government Ombudsman complaint and the designation as a persistent complainant. The Commissioner notes the complainant's concerns but it is not her role to adjudicate on whether a previous legal, council or ombudsman process has been carried out correctly.
23. The complainant pointed out to the Commissioner that he has not sent the council a thousand pages of complaints, which he said would equate to him sending a page of complaints every 2.5 days over seven years. He requested that the Commissioner ask the council how many complaints he has made. He also said that some nearby villagers have made complaints which should have been recorded. As noted above, the council informed the Commissioner that the complainant has made 125 complaints between February 2014 and August 2016 and that only one complaint was received from another party.
24. The complainant expressed his opinion that the council have decided that it will not enforce the site conditions irrespective of whether the

breaches are significant or continuous and that the enforcement officer has such a dislike of him that he flatly refuses to do anything that would help control the activities at the Gypsy site. He said that action is only ever taken if he makes a complaint to his MP or the ombudsman. The Commissioner cannot adjudicate on whether the council has acted appropriately in relation to the complaints made. However, as stated above, she does acknowledge that the provision of the requested information may shed some further light on the issue.

25. As stated in paragraph 12, 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.

26. When considered in isolation, the request in this case appears to have serious purpose and value, that being to establish if the council has properly recorded and processed complaints in accordance with policy and acted appropriately in respect those complaints. However, the Commissioner considers that the fact that the Local Government Ombudsman has already considered complaints on these issues is of significant relevance in this case is. As is the refusal to apply for a judicial review in which the following was stated:

“The dispute is in essence between the claimant who thinks breaches of planning control can be demonstrated sufficiently so that enforcement action could be taken and the Council’s Enforcement Team who consider that the evidence is not sufficient clearly [sic] to establish breaches of planning control. That difference of view does not demonstrate any arguable illegality on the part of the Council.”

27. The Commissioner considers that the council can establish a case for saying that the request seeks to reopen complaints which have already been adjudicated upon by the appropriate regulator which reduces the serious purpose and value of the request. The Commissioner considers that the complainant has crossed over the line between persistence and obsessiveness by forcing the council to revisit issues that it has already considered; issues that have been looked at by objective bodies.

28. When considered in the context and history of the case the Commissioner does not consider that the purpose of the requests justifies the disproportionate effect on the authority. The council has explained how responding to the request would involve a significant number of officer hours and would involve an unreasonable diversion of resources away from core tasks, particularly when the complainant has already received information on how his complaints have been handled. The Commissioner considers that providing the requested information would not satisfy the complainant. She considers that compliance with

the request would be likely to result in further correspondence and has seen no evidence to suggest that providing the requested information in this specific request would satisfy the complainant or bring an end to the issue. The Commissioner can understand how responding to this request, when coupled with previous dealings on the same matter, would cause a disproportionate burden on the council. The Commissioner also notes that the tone of the complainant's correspondence goes beyond the level of criticism that a public authority or its employees should reasonably expect to receive and would have an unjustified detrimental impact on its officers.

29. 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 the council was correct to deem the request vexatious. She has balanced the purpose and value of the request against the detrimental effect on the council and is satisfied that the request reflects the complainant's desire to keep the planning dispute alive, rather than to access recorded information, which can be considered as an inappropriate use of information rights. The Commissioner finds no substantive justification for the request, and is satisfied that compliance would prolong correspondence and constitute an unfair burden on the council. Accordingly the Commissioner finds that regulation 12(4)(b) is engaged.

The public interest test

30. All exceptions in the EIR are subject to the public interest test. The test is whether in all the circumstances of the case the public interest in maintaining the exception overrides the public interest in disclosing the information. When considering her decision the Commissioner must also bear in mind the presumption in favour of disclosure provided by regulation 12 (2).
31. In considering the public interest test, the council said that it understands that there is a default public interest inherent in the transparency of public services, and specifically in the Planning processes. It accepts that there has been heightened public awareness of issues involving Gypsy and Traveller applications in recent years and that it is right that there should be scrutiny of council decisions in this area.
32. The council also said that there is legitimate public interest in assuring the proper use of public funds and that where the request is seen to be vexatious (due to the reasoning above) there is an inherent public interest in maintaining the exception. It stated that there is no public interest in apportioning scarce resources to this task at the expense of other services.

33. The council explained that disclosure of the specific information in this case would not serve the public interest objectives of enhancing accountability, given other information already available, and the internal and external scrutiny given to these complaints to date. The Planning process, including enforcement, is a public process, and various routes are open to individuals to challenge both the decisions and processes of the council, including via their local representatives and in person at meetings.
34. The council summarised that the public interest in maintaining the exception outweighs the interest in disclosure in this case. It said that, in the circumstances, there appears to be little public interest in disclosure, other than the generic arguments and that, on the contrary, there exists a clear public interest in the ability of the council to operate without abuse and harassment, and to apportion resources effectively.
35. The Commissioner has taken into account the general public interest in transparency and accountability. She is mindful of the presumption in favour of disclosure and the need to read exceptions restrictively. She has also taken into account the burden and distraction that would be imposed on the council and the wider public interest in protecting the integrity of the EIR and ensuring that they are used responsibly. She considers that there is little wider public interest in requiring the disclosure of this information because of the fact that the matter has been considered by independent bodies and that the Planning Enforcement service is subject to internal audit, the council's Scrutiny Committee, and Planning legislation. The Commissioner is strongly of the opinion that public authorities should be able to concentrate their resources on dealing with legitimate requests rather than being distracted by requests that have little merit and where the wider public interest would not be served by the disclosure of information.
36. On balance the Commissioner finds that the public interest favours maintaining the exception as the burden imposed on the council would be significant and the complainant's request would not fulfil any wider environmental issue.
37. Therefore, in all the circumstances of the case the Commissioner finds that the public interest in maintaining the exception in regulation 12(4)(b) outweighs the public interest in disclosure.

Right of appeal

38. 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

39. 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.
40. 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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