

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

Date: 26 September 2018

Public Authority: Cambridgeshire County Council

Address: Shire Hall
Castle Hill
Cambridge
CB3 0AP

Decision (including any steps ordered)

1. The complainant has made a series of requests about various specified locations in Ramsey, Cambridgeshire. Cambridgeshire County Council ("the Council") refused to comply with the requests under section 14(1) of the Freedom of Information Act ("the FOIA") and regulation 12(4)(b) of the Environmental Information Regulations ("the EIR"). The complainant subsequently contested the Council's refusal.
2. The Commissioner's decision is that the Council has correctly refused the requests under section 14(1) and regulation 12(4)(b).
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 13 March 2018, the complainant submitted the following request (Council reference 8873):

I have searched the Full Electoral Registers and Census Records for 1841, 1851, 1861, 1871, 1881, 1891, 1901, 1911 and cannot find any person who owned or occupied the property that was situated at 45 High Street, Ramsey, PE26 1AB

I have searched the Planning, Planning Enforcement, Highways Files and HM Land Registry and Police Records but cannot find a record of the property that was situated at 45 High Street, Ramsey, PE26 1AB.

I have searched the Royal Mail, BT Telephone Records, Gas, Electricity and Water supply records and cannot find a record of the property that was situated at 45 High Street, Ramsey, PE 26 1AB.

Do Ramsey Town Council, Huntingdonshire District Council, Cambridgeshire County Council or Cambridgeshire Constabulary hold any records for 45 High Street, Ramsey, PE26 1AB? If so please supply that information to me.

5. On 17 March 2018, the complainant submitted the following request (Council reference 8874):

I attach a copy of the London Gazette, dated 2 September 1971 headed Huntingdon and Peterborough County Council.

Huntingdon and Peterborough County Council was a short-lived administrative and geographical county in East Anglia in the United Kingdom. It existed from 1965 to 1974, when it became part of Cambridgeshire.

Please provide me, by email, with a copy of the Order and a Map showing the road to which it relates.

If however you have reason to believe that this request should have been addressed to some other public body please email it to them and copy me.

6. The Council responded on 23 March 2018. It refused to comply with the requests under section 14(1) of the FOIA and regulation 12(4)(b) of the EIR, and advised that any further requests on related matters would be logged but not responded to.

7. On 18 April 2018, the complainant submitted the following request (Council reference 8990):

Firstly I have addressed this request to a few of the 120 persons and organisations consulted on this application.

I have extracted the attached plan from Cambridgeshire County Council's Planning Application 15/00587/FUL

In the bottom left hand corner of the plan it states :-

"Location of existing path to be widened to 2.00 m. Upgraded from a R.O.W to Highway."

FOI/EIR Request:

- 1. Is this Highway the same "private road" referred to in the Claim by Cyril Green v Dr Willem Hertzog in the Hearing before Judge Conolly – Gage at Huntingdon County Court on 28 and 29 February 1968?*
 - 2. What will this private Highway serving the former Flag Holt Methodist Chapel, School and Burial Plot aka The Territorial Drill Hall joining Mugglestone Lane be named or called?*
 - 3. Who is or who will be responsible for the repair and maintenance of this Highway?*
 - 4. Why are no persons, regulators, parish, town, district, county councillors and M.P's permitted to inspect the complete Planning Enforcement File Reference 78/00031 focused on this specific Highway?*
8. The Council did not respond, but subsequently informed the ICO that it maintained reliance upon its earlier refusal.

Scope of the case

9. The complainant contacted the Commissioner on 20 June 2018 to complain about the way his requests for information had been handled. The requests seek various information, including that about the land, roads and built environment close to the complainant's home. The Council has dealt with the requests as partly seeking environmental information under the EIR. The Commissioner agrees that part the requested information is environmental information.

10. The Commissioner considers the scope of the complaint to be the determination of whether the Council has correctly applied section 14(1) of the FOIA and regulation 12(4)(b) of the EIR.

Reasons for decision

Section 14(1) of the FOIA and Regulation 12(4)(b) of the EIR

11. Section 14(1) of the FOIA states that:

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

12. Regulation 12(4)(b) of the EIR states that:

For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that-
(b) the request for information is manifestly unreasonable;

13. The Commissioner recognises that, on occasion, there can be 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.
14. The Commissioner has published guidance on vexatious requests and for ease of reference, this can be accessed here:
<https://ico.org.uk/media/for-organisations/documents/1198/dealingwith-vexatious-requests.pdf>
15. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. Sometimes, it will be obvious when requests are vexatious, but sometimes it may not. In such cases, it should be considered whether the request would be likely to cause a disproportionate or unjustified level of disruption, irritation or distress to the public authority. This negative impact must then be considered against the purpose and public value of the request. A public authority can also consider the context of the request and the history of its relationship with the requester when this is relevant.

16. While section 14(1) of the FOIA effectively removes the duty to comply with a request, regulation 12(4)(b) of the EIR only provides an exception. As such the EIR explicitly requires a public authority to apply a public interest test (in accordance with regulation 12(1)(b)) before deciding whether to maintain the exception. The Commissioner accepts that public interest factors, such as proportionality and the value of the request, will have already been considered by a public authority in deciding whether to engage the exception, and that a public authority is likely to be able to 'carry through' the relevant considerations into the public interest test. However, regulation 12(2) of the EIR specifically states that a public authority must apply a presumption in favour of disclosure. In effect, this means that the exception can only be maintained if the public interest in refusing the request outweighs the public interest in responding.

Contextual background

17. The complainant has provided limited submissions in respect of this case; however, having considered the phrasing of the requests, the Commissioner considers it reasonable to conclude that they are connected to a wider substantive matter that the complainant is concerned about, and which the Commissioner is aware of from other complaints that have been submitted by the complainant.
18. This wider substantive matter, as understood by the Commissioner, is that the complainant holds various concerns about the legal ownership of land and rights of way in the vicinity of his property; the underlying focus of which appears to be the legality of the access way to the complainant's property. The Commissioner understands that these concerns have formed the basis of a long-running dispute (over the past 30 years) with the relevant public authorities.

The Council's position

19. The Council considers that the requests are intrinsically related to the long-running dispute about the complainant's property. This dispute was reviewed by the Council in 2006, when a Stage 3 complaint outcome was provided to the complainant which seemingly found no basis for further consideration, and which referred him to the Local Government Ombudsman ("the LGO") should he remain dissatisfied. This position was reiterated to the complainant in a letter from the Council's Chief Executive in 2008, when the complainant was advised that the matter was considered to be closed.
20. In addition to considering the matter under its complaints process, the Council has also sought to make all relevant historic information available to the complainant in response to requests made under the

FOIA and EIR, particularly in response to the requests that the complainant made during 2005 to 2008.

21. The Council considers that the complaint has since continued to submit information requests under the FOIA and EIR in an effort to re-open the matter. In particular, the Council notes that the later requests are purposefully phrased in such a way to prevent the Council from providing a clear and full response. For example, by requesting the "legal status" of a site (which the Council does not have any statutory ability to provide), or requesting information that the Council does not have any reasonable expectation of holding (such as information created by the police). By making requests that the Council cannot satisfy, the complainant is therefore able to escalate the matter to the Commissioner and force continued dialogue about the substantive matter.
22. The Council does not consider that it has the ability to resolve the matter to the complainant's satisfaction, and contests that whilst the matter remains of importance to the complainant, there is limited public interest that justifies the continued diversion of the Council's resources.

The Commissioner's analysis

23. Firstly, the Commissioner would like to highlight that there are many different reasons why a request may be vexatious, as reflected in the Commissioner's guidance. There are no prescriptive 'rules', although there are generally typical characteristics and circumstances that assist in making a judgement about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed as vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates them. A commonly identified feature of vexatious requests is that they can emanate from some sense of grievance or alleged wrong-doing on the part of the authority.
24. The Commissioner's guidance has emphasised that proportionality is the key consideration for a public authority when deciding whether to refuse a request as vexatious. The public authority must essentially consider whether the value of a request outweighs the impact that the request would have on the public authority's resources in responding to it. Aspects that can be considered in relation to this include the purpose and value of the information requested, and the burden upon the public authority's resources.

The purpose and value of the requests

25. The Commissioner has reviewed the refused requests and, having considered the information that is sought, considers it reasonable to find that they are related to the wider substantive matter. However, the Commissioner understands that this matter has previously been reviewed by the Council as part of its corporate complaints process, and that the Council found no basis on which it needed to undertake further action. Accordingly, the complainant was referred to the LGO if he wished to dispute the Council's finding.
26. The Commissioner has also noted, from associated cases, the long-running nature of the complainant's interaction with the Council (and also with Huntingdonshire District Council, which held responsibility for highways in Ramsay before the role was transferred to the Council in 2005). In particular, the Commissioner has noted the contents of the following Decision notices, all of which appear to be related to the substantive matter:
- FS50193203, issued in relation to Huntingdonshire District Council on 5 November 2009, finding that all held information had been made available¹;
 - FS50317249, issued in relation to the Council on 18 July 2011, finding that all held information had been made available²;
 - FER0397352, issued in relation to the Council on 30 January 2012, finding that all held information had been made available³;
 - FER0783541, issued in relation to the Council on 18 September 2018, finding that all held information had been made available⁴.
27. Having considered the content of these previous Decisions, the evidence suggests to the Commissioner that the complainant is using the rights provided by the FOIA and EIR to force continued engagement by the Council on a historic matter that it considers to be closed. It is relevant that in 'Other matters' of Decision notice FER0393352, the

¹ https://ico.org.uk/media/action-weve-taken/decision-notices/2009/494732/FS_50193203.pdf

² https://ico.org.uk/media/action-weve-taken/decision-notices/2011/629582/fs_50317249.pdf

³ https://ico.org.uk/media/action-weve-taken/decision-notices/2012/686100/fer_0397352.pdf

⁴ A public version of which will shortly be available at www.ico.org.uk

Commissioner noted that the Council intended to refuse further related requests as vexatious, and additionally, advised the complainant that further related complaints to the Commissioner may be declined as frivolous or vexatious under section 50(2)(c) of the FOIA.

The burden upon the Council

28. It is apparent to the Commissioner that previous requests on this matter have already consumed significant public resources. It is recognised that compliance with the three requests under consideration would place further burden on the Council, which would need to task officers with searching for the (seemingly) historic information which the complainant seeks, or else considering whether recorded information is held that allows some of the specific questions asked by the complainant to be answered.
29. The Commissioner further recognises that responding to these requests would be highly likely to generate further requests and correspondence about the matter.

The public interest test

30. Regulation 12(1)(b) of the EIR states:

...a public authority may refuse to disclose environmental information requested if-

(b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

31. The Commissioner recognizes that the requests relate to a matter of personal concern to the complainant, and that the disclosure of any known further information would represent transparency on the part of the Council.
32. However, it is apparent to the Commissioner that the requests relate to a long-running dispute, the resolution of which is unlikely to be achieved by the Council. It is reasonable for the Commissioner to consider that, should the complainant seek a determination on the matter, it would need to be referred to either the public authority with jurisdiction to consider such disputes, or the Courts.
33. It is also evident that this matter relates to a private interest (i.e. the complainant's own property), and there is no evidence available to the Commissioner that suggests the requests serve a wider public interest.

The Commissioner's conclusion

34. Having considered the limited public value of the requests, in conjunction with the burden on the Council's resources and the corresponding public interest test, the Commissioner has concluded that the Council's refusal of the requests under section 14(1) and regulation 12(4)(b) was correct.

Right of appeal

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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

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
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