

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

**Decision notice**

**Date:** 2 September 2019

**Public Authority:** Bracebridge Heath Parish Council  
**Address:** Bracebridge Heath Library  
London Road  
Bracebridge Heath  
Lincoln  
LN4 2LA

**Decision (including any steps ordered)**

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1. The complainant has requested information relating to the creation of a draft neighbourhood plan. Bracebridge Heath Parish Council ("the Parish Council") refused the request as vexatious.
2. The Commissioner's decision is that the Parish Council should have handled the request under the EIR but that the request was vexatious and thus manifestly unreasonable. She therefore considers that the Parish Council was entitled to rely on regulation 12(4)(b) to refuse the request. However, as the Parish Council should have handled the request under the EIR, it should also have carried out an internal review (reconsideration) of its response. It therefore breached regulation 11 of the EIR in responding to the request.
3. The Commissioner does not require any further steps to be taken.

**Background**

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4. The Parish Council previously tasked a steering group (made up of councillors and non-councillors) with putting together a neighbourhood plan for Bracebridge Heath to guide future development in the area. In 2016, the Parish Council rejected the steering group's draft local plan and chose to disband the group. There is a disagreement between the complainant and the Parish Council as to the merit of the draft plan. The

Parish Council has stated that it believed the draft to be flawed. The complainant believes that parish councillors "sabotaged" the plan.

## Request and response

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5. On 23 December 2018, the complainant wrote to the Parish Council and requested information in the following terms:

- "[1] What controlled numbered version of the 2016 DRAFT plan did the Parish Council base its rejection decision upon?"*
- [2] Who actually signed and dated the Terms of Reference and where can this document be found?*
- [3] How many councillors took an active role in the development of this version of the 2016 DRAFT plan?*
- [4] What written information was provided by the Bridging Co-Coordinator (the Parish Council representative) on the Steering Group, to the Parish Council at Parish Council Meetings following every Group discussion?*
- [5] How was this information used by the Parish Council?*
- [6] As there does not appear to be any written evidence of this information in the Parish Council Full meeting minutes. Where can these Parish Council meeting minutes and notes used to inform the Parish Council be found?*
- [7] Who were the members of this Steering Group during the development of the DRAFT Plan?*
- [8] Why did the Finance & General Purpose Committee and ultimately the full Parish Council accept the legitimate reason from the Acting Secretary of this group as to the confusion around the "disposal" of the 2016 questionnaires?*
- [9] What were the sums of unspent grant money and when was this money returned by the Parish Council to the Granting Authorities?*
- [10] Why should a Councillor elected in February 2017 declare any interest at Parish Council meetings in a disbanded organisation? (the Group had not existed since 6 September 2016)?*
- [11] When and How did the Parish Council investigate the sabotage allegations and were these investigations minuted by the Parish*

*Council? You may wish to discuss this with the Parish Councillor who made the sabotage allegation!"*

6. On 16 January 2019, the Parish Council responded. It provided some information and stated that it did not hold some of the requested information. It refused to provide the remaining information as it considered the request to be vexatious.
7. The complainant requested an internal review on 18 February 2019. The Parish Council sent a further response on 27 February 2019 and advised him that he could complain to the ICO.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 22 March 2019 to complain about the decision to refuse his request as vexatious.
9. The Commissioner considers that the scope of her investigation is to:
  - a. Determine the correct information access regime
  - b. Determine whether the request was vexatious
  - c. Address the procedural handling of the request

### **Reasons for decision**

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Is the information environmental?

10. Regulation 2(1) of the EIR defines environmental information as being information on:
  - (a) *the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;*
  - (b) *factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);*
  - (c) *measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and*

*activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;*

- (d) reports on the implementation of environmental legislation;*
- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and*
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);*

11. The Commissioner has not seen the requested information but, as it is information relating to the creation of a neighbourhood plan, she believes that it is likely to be information on "measures" affecting the elements of the environment. For procedural reasons, she has therefore assessed this case under the EIR.

Was the request manifestly unreasonable?

12. Regulation 5(1) of the EIR states that:

*a public authority that holds environmental information shall make it available on request.*

13. Regulation 12 of the EIR states that:

*(1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if—*

*(a) an exception to disclosure applies under paragraphs (4) or (5); and*

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

*(2) A public authority shall apply a presumption in favour of disclosure.*

*(4) 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;*

14. Following the lead of the Upper Tribunal in *Craven v Information Commissioner & DECC* [2012] UKUT 442 (AAC), the Commissioner considers that there is, in practice, no difference between a request that is vexatious under the FOIA and one which is manifestly unreasonable under the EIR – save that the public authority must also consider the balance of public interest when refusing a request under the EIR. The analysis that follows looks at vexatiousness as, if the request is found to be vexatious, then it will also be manifestly unreasonable and hence Regulation 12(4)(b) will be engaged.
15. The term “vexatious” is not defined within the FOIA. The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield* [2012] UKUT 440 (AAC). It commented that “vexatious” could be defined as the “*manifestly unjustified, inappropriate or improper use of a formal procedure*”. The Upper Tribunal’s approach in this case was subsequently upheld in the Court of Appeal.
16. The *Dransfield* definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
17. *Dransfield* also considered four broad issues: (1) the burden imposed by the request (on the public authority and its staff), (2) the motive of the requester, (3) the value or serious purpose of the request and (4) harassment or distress of and to staff. It explained that these considerations were not meant to be exhaustive and also explained 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).
18. The Commissioner has published guidance on dealing with vexatious requests, which includes a number of indicators that may apply in the case of a vexatious request.<sup>1</sup> However, even if a request contains one or more of these indicators it will not necessarily mean that it must be vexatious.
19. When considering the question of vexatiousness, a public authority can consider the context of the request and the history of its relationship with the requestor, as the guidance explains: “*The context and history*

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatiousrequests.pdf>

*in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request."*

*The complainant's position*

20. The complainant did not provide a consolidated document setting out the reasons why he considered his request was not vexatious (although the Commissioner also notes he was under no obligation to do so). However, having considered the various items of his correspondence as a whole the Commissioner considers that the complainant's objections can be summarised thus:

- a. That the neighbourhood plan is an important local policy and there is therefore an inherent value in understanding how decisions relating to the plan have been and are being taken.
- b. Given the amount of time that the steering group devoted to producing its draft, those who participated have a right to know why the Parish Council chose not to adopt that draft.
- c. Given the clear disagreement between the Parish Council and the steering group and the increasingly bitter relations between the two, there is a public interest in establishing the facts of what took place.

21. The complainant appeared to accept that his relations with the Parish Council were poor, but noted:

*"I am sorry that this has degenerated to this point but open answers to simple questions may have resolved this, although it may have attracted some supplementary questions."*

*The Parish Council's position*

22. The Parish Council sought to justify its refusal on five grounds:

- a. The purpose and subject of the request;
- b. The previous pattern of correspondence with the complainant;
- c. Overlapping requests for information;
- d. Unfounded accusations;
- e. The use of information rights legislation to air personal grievances against individual members of council.

23. In relation to ground a. the Parish Council supplied the Commissioner with a schedule of requests which demonstrated that the complainant had submitted a total of two information requests, one Subject Access Request and a request for deletion of his personal data in the three months prior to the request set out above. It noted that the SAR alone had required 86 hours of staff time to fulfil.
24. The Parish Council also stated that between 2014 and 2017, the complainant had made a total of 17 FOI requests. It stated that these had been on a wide range of topics but failed to provide any further detail or evidence to show why these requests had been burdensome or how this related to the request in question – other than that the person making the requests was the same.
25. In relation to grounds b. and c., the Parish Council pointed again to its schedule of requests which demonstrated that the two earlier FOI requests had resulted in some further correspondence with the complainant and that the request for deletion of the complainant's personal data had followed the fulfilment of his SAR.
26. The Parish Council further noted that the second of the two earlier requests covered very similar ground to the first and that it had been submitted before the first one had been answered.
27. Finally, the Parish Council noted that the complainant had, in making the request outlined above, indicated that a further request might be forthcoming depending on the response.
28. In relation to ground d. the Parish Council pointed to the repeated allegations, by the complainant, that the draft local plan, put together in 2016 had been "sabotaged". The Parish Council considered that the complainant had yet to put forward any evidence to support this assertion – which, it felt, should be put to proof.
29. The Parish Council pointed to a public statement which it had made in October 2018 which cited numerous issues with the draft plan – including plagiarism, fabrication of evidence and the misuse of public funds – which had caused the Parish Council to reject the plan as being flawed. It argued that it was these reasons which had caused the rejection and not "sabotage" on behalf of the Parish Council. It noted in the correspondence it provided that the complainant had been asked several times to provide evidence of his "sabotage" assertions so that they could be investigated – but that he had yet to do so.
30. Finally, in relation to ground e. the Parish Council stated that it considered the complainant to be using information requests as a

method of pursuing and prolonging a personal grievance that he has with the Parish Council.

31. The Parish Council pointed to various social media posts, made by the complainant, which, it argued, demonstrated the complainant's antipathy towards the Parish Council in general and its chairman in particular.
32. The complainant had, the Parish Council argued, failed to accept that the draft plan, drawn up by the steering group of which he was a part, had been drawn up using a flawed process and was itself therefore fundamentally flawed. As a result, it argued, he was intent on "proving" that the plan had only been rejected as a result of "sabotage" on behalf of the Parish Council. It therefore argued that he was trying to reopen matters from two years ago, rather than pursuing them through more appropriate channels.
33. Whilst the Parish Council drew attention to various comments the complainant had made in which he threatened to initiate formal complaints or "legal action" in relation to the draft plan, it noted that he had not taken such action.

#### *The Commissioner's view*

34. The Commissioner considers that the request was manifestly unreasonable and that the Parish Council was not therefore obliged to comply with it.
35. The Commissioner considers that the Parish Council failed to demonstrate that complying with the complainant's requests was (at the time this request was made) unduly burdensome. The number of requests it evidenced was relatively low and, although the Parish Council referred to the complainant's SAR as having proved particularly burdensome, it failed to demonstrate how that burden had arisen.
36. The Parish Council also failed to demonstrate a pattern of correspondence which would make the request in question unreasonable when considered in context. Whilst the Commissioner accepts that, in relation to the small number of requests included in the schedule, each one included some sort of follow-up correspondence, she does not accept that this was unreasonable.
37. An individual has a right to request an internal review if they are dissatisfied with a response they receive to an information request. The Commissioner also considers that it is not unreasonable for an individual to notify a public authority if they feel that a request has not been answered within 20 working days – especially when, as appears to have happened in the case of an earlier request, a response has gone astray.



Finding out what personal data an organisation may hold on you and then making a request for some or all of that data to be deleted is, again, not necessarily an unreasonable course of action.

38. Whilst the Commissioner notes that one earlier request appears to have overlapped another, she does not consider that this single example is sufficient to demonstrate a pattern of behaviour. Whilst the Parish Council has alluded to earlier requests, it has not provided any evidence in support of its assertions that the requests follow a pattern.
39. However, turning to the "unfounded accusations", the Commissioner notes that the complainant has, in his correspondence with the Parish Council, continually referred to the earlier draft plan having been "sabotaged" deliberately by the Parish Council. This is a serious allegation and the Commissioner notes the Parish Council's assertion that the complainant has not put forward any evidence in support of his accusations.
40. Finally, in relation to what the Parish Council's asserts is the inappropriate use of the EIR procedure, the Commissioner agrees that this is the case.
41. It is clear from the correspondence that the information request stems from the complainant's disagreement with a decision of the Parish Council. The task for the Commissioner is not to judge whether that decision was right or wrong, but whether complying with the request is likely to bring matters to a conclusion.
42. The Commissioner notes that the request outlined above appears designed to elicit a pre-determined outcome which is acceptable to the complainant. She considers that much of the information requested is likely to be either not held by the Parish Council in recorded form or already available to the complainant. She therefore considers it unlikely that the Parish Council would be able to issue a response that would be likely to satisfy the complainant and thus complying with this request would be likely to lead to further correspondence, including further information requests.
43. It is the view of the Commissioner that the complainant is unwilling to accept that the Parish Council may have rejected the draft plan because of the perceived flaws in the way the plan was put together and not as a result of malicious behaviour. She considers it unlikely that responding to the request would shed significant light on the merits of the decision and considers that there are more appropriate routes by which the complainant can challenge the Parish Council's decision if he believes that it is unreasonable.

44. Having considered all the above evidence, the Commissioner therefore concludes that the request was manifestly unreasonable and therefore regulation 12(4)(b) is engaged.

*Public interest test*

45. For a public authority to rely on regulation 12(4)(b) to refuse a request, in addition to demonstrating that the exception is engaged, it must also demonstrate that the public interest in maintaining the exception would outweigh the public interest in disclosure.
46. The Commissioner accepts that there is an inherent public interest in public authorities being transparent about the ways in which they spend public money. She also accepts that a neighbourhood plan is a document of significant importance to the local community and therefore there is an increased public interest in understanding how such a document might come about and the process which was followed.
47. However, as the Commissioner has recorded above, she considers that little information is likely to emerge that would shed meaningful light on the rejection of the previous draft plan. If the local community is unhappy with the decision the Parish Council made, there are more effective methods of holding the authority to account.
48. Equally, the Commissioner considers that a public authority has a right to protect itself from requests which are unreasonable and it is in the wider public interest that they are able to do so. Using public resources to prolong a grievance is not in the public interest.
49. The Commissioner therefore concludes that, the balance of the public interest favours maintaining the exception at regulation 12(4)(b) of the EIR and thus the Parish Council was entitled to rely on that exception to refuse the request.

Reconsideration (Internal Review)

50. Regulation 11 of the EIR states that:

- (1) *Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant's request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request.*
- (2) *Representations under paragraph (1) shall be made in writing to the public authority no later than 40 working days after the date on which the applicant believes that the public authority has failed to comply with the requirement.*
- (3) *The public authority shall on receipt of the representations and free of charge—*
  - (a) *consider them and any supporting evidence produced by the applicant; and*
  - (b) *decide if it has complied with the requirement.*
- (4) *A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the date of receipt of the representations.*
- (5) *Where the public authority decides that it has failed to comply with these Regulations in relation to the request, the notification under paragraph (4) shall include a statement of—*
  - (a) *the failure to comply;*
  - (b) *the action the authority has decided to take to comply with the requirement; and*
  - (c) *the period within which that action is to be taken.*

51. The complainant contacted the Parish Council on 18 February 2019. The second line of his letter read:

*"Would you please clarify and provide an objective explanation as to why you perceive this request to be in part vexatious?"*

52. The Commissioner considers such correspondence to be a clear indication that the complainant was seeking an internal review of the way his request was handled. The Parish Council replied on 27 February 2019 to say that this correspondence had:

*"Been passed on to council for consideration. A further response may be provided following a meeting of the parish council on Tuesday 5<sup>th</sup> March 2019."*

53. There is a statutory requirement under the EIR for a public authority to carry out an internal review on request and, as the Commissioner has already noted, the request should have been dealt with under the EIR.
54. The Commissioner cannot consider the Parish Council's letter of 27 February 2019 to meet the requirements of regulation 11 of the EIR. She therefore finds that the Parish Council breached that particular regulation in the way it responded to the request.

## Right of appeal

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55. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

56. 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.
57. 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 .....**

**Ben Tomes  
Team Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**