

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

Date: 26 September 2024

Public Authority: Egerton Parish Council
Address: Millennium Hall
Elm Close
Egerton
Ashford
Kent
TN27 9DS

Decision (including any steps ordered)

1. The complainant requested information relating to appeals to a planning decision made from Egerton Parish Council ("the council"). The council refused the request on the basis that section 14(1) of FOIA applied, (vexatious requests).
2. The Commissioner's decision is that the requested information is environmental information and that the council should have considered the request under the EIR. He has decided that the council was not able to apply Regulation 12(4)(b) of the EIR to refuse to respond to the request, and that the council failed to comply with Regulation 5(2) of the EIR in that it did not respond to the request within 20 working days.
3. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
 - To respond to the request again, without relying upon Regulation 12(4)(b) of the EIR.
4. The public authority must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court

pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 10 February 2024, the complainant wrote to the council and requested information in the following terms:

“In light of the recent article in the Egerton Update and various discussions taking place on social media I feel it time that EPC make public the following:

1. All legal advice received and paid for whilst EPC pursued their request for a Judicial Review of the decision of the Planning Inspector to grant planning permission on North Field. [information redacted by the ICO],
2. All legal submissions made to the Royal Courts of Justice by EPC for both cases considered in 2023,
3. Copies of both rulings made by the Royal Courts of Justice [information redacted by the ICO]... 3/4 in June and November 2023,
4. A full breakdown of legal costs incurred by EPC in pursuing the two JRs and opposing the appeal,
5. A full breakdown of legal costs EPC had to pay to the defendants in both JRs,
6. Confirmation of monies donated to cover legal costs so that the final figure covered by EPC can be clearly shown.

Please note that I submit all of the above under a FOI request.”

6. The council initially failed to respond to the request within 20 working days. It's response therefore did not comply with Regulation 5(2) of the EIR.
7. Following further reminders by the complainant it provided its response on 23 April 2024. It refused the request on the basis that section 14 of FOIA applied (vexatious requests).

Scope of the case

8. The complainant contacted the Commissioner on 24 April 2024 to complain about the way their request for information had been handled.
9. The analysis below considers:
 - Whether the applicable access regime is FOIA or the EIR
 - The application of Regulation 12(4)(b) to refuse the request.
10. The council has submitted other arguments which relate to whether some of the relevant information was held by it at the time that the request was received, and whether other exemptions are applicable to withhold the information. However, given that the council considered the request under FOIA, the Commissioner will firstly decide whether Regulation 12(4)(b) is applicable.
11. If the Commissioner decides that Regulation 12(4)(b) is applicable then the council is not under a duty to respond to the request further. If it is not, then the council will need to reconsider its response under the EIR and respond again, without relying upon Regulation 12(4)(b).

Reasons for decision

Is the requested information environmental?

12. Regulation 2(1) of the EIR defines the types of information which fall within the scope of the EIR to be considered.¹
13. If the requested information falls within the definition of “environmental information” in Regulation 2(1) of the EIR, then the requested information must be considered under the EIR rather than under FOIA.
14. The council initially responded to the complainant’s request under the terms of FOIA. The Commissioner has, however, decided that the request falls to be considered under the EIR because the judicial review associated with this request relates to a planning decision approving the development of housing. This would affect the factors outlined in Regulation 2(1)(a) of the EIR. The information in question relates to the legal arguments and costs relating to a planning appeal against this.

¹ <https://www.legislation.gov.uk/uksi/2004/3391/regulation/2/made>

15. Section 14 of FOIA allows a public authority to refuse to respond further to a request which is vexatious. The equivalent exception under the EIR is Regulation 12(4)(b).
16. In this case, therefore, the Commissioner has substituted the council's application of section 14 for the application of Regulation 12(4)(b).

Regulation 12(4)(b) – Manifestly unreasonable request

17. Under Regulation 12(4)(b), a public authority can refuse to disclose environmental information if the request for information is manifestly unreasonable. A request may be manifestly unreasonable either because of the excessive burden it would require in order to comply with it, or because the request is vexatious.

Is the request manifestly unreasonable?

18. The Commissioner's guidance on manifestly unreasonable requests² clarifies that the test for a vexatious request under the EIR is essentially the same as that under FOIA. The ICO's guidance on section 14(1) defines 'vexatious' as the:

"...manifestly unjustified, inappropriate or improper use of a formal procedure." (paragraph 27 of the Upper Tribunal's decision in *Dransfield*).³

19. This clearly establishes that the concepts of "proportionality" and "justification" are central to any consideration of whether a request is vexatious. In essence, does the wider value of the information being disclosed outweigh the burden created, or the vexatious factors associated with the request.
20. The Upper Tribunal in the *Dransfield* case suggested four broad themes which might indicate that a request is vexatious:
 - the burden (on the public authority and its staff);
 - the motive (of the requester);
 - the value or serious purpose (of the request); and
 - any harassment or distress (of and to staff).

² <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/regulation-12-4-b-environmental-information-regulations-manifestly-unreasonable-requests/#howdowe>

³ [Dransfield & Anor v The Information Commissioner & Anor \[2015\] EWCA Civ 454 \(14 May 2015\) \(bailii.org\)](#)

21. A useful starting point is to assess the value or purpose of the request before looking at the impact handling the request would have on a public authority.
22. When considering this, the Upper Tribunal in Dransfield asked itself, "Does the request have a value or serious purpose in terms of there being an objective public interest in the information sought?" The public interest can encompass a wide range of values and principles relating to what is in the best interests of society, including, but not limited to:
 - holding public authorities to account for their performance;
 - understanding their decisions;
 - transparency; and
 - ensuring justice.

The complainant's arguments

23. The complainant argues that his request is not vexatious. He argues that the information took legal action to appeal a planning approval which was ultimately unsuccessful. The complainant argues, therefore, that there is a public value in the council being clear about the reasons behind its appeals, and the cost of its actions to taxpayers.

The council's arguments

24. The council argues that the request follows a long history of requests it has received from the complainant, spreading over a period of four years. It considers that this amounts to the harassment of it and its employees. It said that this was as a result of it not agreeing to support a planning application made to Ashford District Council ("ABC") in the past.
25. The council argues that the complainant and their associates, have made a voluminous number of requests, complaints, and audit requests about the council in an attempt to disrupt it. It said that as a result of the unnecessary burden being placed on the council, this has put it, and its officers, under significant stress.
26. It noted that the complainant and an associate have made seven Code of Conduct complaints to ABC's Monitoring Officer about parish council members but none of these complaints have been upheld.
27. It noted that ABC recently publicised that each complaint to the Monitoring Officer costs the council taxpayer an average £4,000 in direct costs and more, in indirect costs.

28. It said that Egerton Parish Council is currently ABC's most complained about parish council, but all of the complaints have been made by the complainant and one other person, and none have ever been upheld.
29. It argues that the requests have previously reached a level where the Commissioner accepted that a request made in 2021 was vexatious⁴, and it provided the Commissioner with a chronology of further requests which the complainant has made to the council since that point. The number of requests is voluminous.
30. It argues that much of the information will already be available to the complainant due to their involvement in the proceedings, that some of the information will be exempt under other exemptions, and that some of the information was not held by the council at the time that it received the request.
31. It argues that the matter in question is closed as planning approval has now been confirmed, however, the complainant and their associates have continued to write to the council over the issue.

The Commissioner's analysis

32. The council explained that the background to the request is an application to appeal against a decision of the Secretary of State to overturn an ABC decision to refuse a planning application.
33. The parish council applied to the High Court for a judicial review of the Planning Inspectorate's decision to allow the planning appeal. This was refused. The parish council then sought to appeal that decision, but permission for that appeal was also refused and the planning approval was therefore confirmed. Costs were also ordered against the council for this process.
34. The request for information seeks information on the legal arguments, the judgements, the amount of costs paid to the other party by the council, and the parish council's legal costs for those unsuccessful appeals.
35. As noted, the Commissioner has previously issued a decision notice which found that a different request from the complainant was vexatious. He notes that there is clearly merit to the council's position in

⁴ <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4023369/ic-194636-v6z0.pdf>

this case as a substantial amount of further correspondence has been received by it over the same issue since that point in time.

36. The Commissioner notes the council's argument that the complainant has made numerous requests for information, and that they have also made complaints about councillors and requests for auditors to review its financial information, at a significant cost to the council.
37. The council is only a small parish council, and the clerk works part time to deal with the correspondence it receives. The Commissioner accepts the council's argument that the volume of requests and complaints has led to a significant burden being placed upon it. The council has also provided evidence of the significant stress and burden which this has placed on it and its staff.
38. The Commissioner has not underestimated the burden described by the council. These factors significantly weaken the complainant's argument that the request is not manifestly unreasonable or vexatious.
39. However, the Commissioner must take into account the recent history behind this complaint. As explained above, even where a request for information falls within some of the criteria highlighted, if there is a significant wider public value in the disclosure of the requested information then this can outweigh the arguments for Regulation 12(4)(b) being applicable.
40. The Commissioner notes that as a result of its planning appeals, the council may have incurred significant costs. Part of these costs will need to be paid out of the public purse. The council said that these appeals were made on the basis of the responses it had received to its Neighbourhood Plan consultations, which it says were strongly against the planning application being approved. The Commissioner also notes that donations were received from local taxpayers in order to part fund the appeals. The council therefore argues that there was a strong level of community support when taking the appeals forward.
41. Nevertheless, the appeals will have created an additional financial and resource burden upon the council, and setting aside the complainant's motivation in making the request, there remains a very strong wider public value in it being clear about the costs of its unsuccessful appeals to the public and its reasons for taking forward that action. There is also a strong public interest in knowing whether the legal advice it received supported a view that appeals would be merited and likely to succeed.
42. Whilst the Commissioner accepts that the complainant may already know some of the information in question, the wider public may not, and therefore there is a wider public value in that information being made

public. In this way, the public can satisfy itself as to whether the appeals, and the associated costs, were merited and justifiable.

43. The Commissioner also does not consider that responding to this individual request would create a significant burden upon the council. Where it holds that information, the information should be reasonably easily located and provided to the complainant in response to their request.

The Commissioner's conclusions

44. Whilst the Commissioner considers it possible that other exceptions may be applicable to withhold some of the information in question, his sole concern in this decision notice is whether the request can be refused under Regulation 12(4)(b) on the grounds that the request was manifestly unreasonable on the grounds that it is vexatious.
45. Looking to the Dransfield test noted above, the Commissioner must decide whether the request is manifestly unjustified, inappropriate or an improper use of a formal procedure. As explained above, in the Dransfield test the Upper Tribunal determined that factors such as holding public authorities to account for their performance, understanding their decisions, transparency and ensuring justice are all relevant to that decision.
46. The Commissioner has outlined above how the council's decisions to take two appeals forward are likely to have created a significant cost and burden upon it which will also have an effect upon the public purse and the local community. These appeals were subsequently refused by the courts. There is therefore a strong public value in the council being transparent about its decision making, and the costs of those decisions to the public.
47. Whilst the Commissioner accepts that this case is finely balanced, his decision is that, on balance, the wider public value of the requested information outweighs the vexatious factors, identified by the council and the burden which would be created by responding to the request in this instance.
48. The Commissioner has therefore decided that the council was not correct to apply Regulation 12(4)(b) to refuse to respond to the request further in this instance.
49. The Commissioner therefore requires the council to respond to the request again, without relying upon Regulation 12(4)(b) of the EIR.

Right of appeal

50. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

51. 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.
52. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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