

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

**Decision notice**

**Date:** 12 January 2016

**Public Authority:** Borough Council of Wellingborough  
**Address:** Swanspool House  
Doddington Road  
Wellingborough  
Northamptonshire  
NN8 1BP

**Decision (including any steps ordered)**

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1. The complainant has requested copies of correspondence the Borough Council of Wellingborough ('the Council') may have had with various parties concerning Sywell Aerodrome Ltd. The Council considers that the request is vexatious under section 14(1) of the FOIA. So far as it is relevant, the Council also considers that the request is manifestly unreasonable under regulation 12(4)(b) of the Environmental Information Regulations and that the public interest favours maintaining the exception. The Council says that if the request was not vexatious or manifestly unreasonable, it would not be obliged to comply with the majority of the elements of the request under the provision at section 12 of the FOIA (cost exceeds the appropriate limit) and regulation 12(4)(b). It says that information requested in one part of the request would be exempt under section 42/regulation 12(5)(b) (legal professional privilege), with the public interest favouring maintaining this exemption.
2. The Commissioner finds that the Council has breached section 10(1) of the FOIA, and regulation 5(2) of the EIR, as it did not respond to the request within 20 working days.
3. The Commissioner has decided that the request is vexatious and that the Council has correctly applied section 14(1) to some of the

information and regulation 12(4)(b) to the environmental information. He does not require the Council to take any steps.

## Request and response

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4. On 25 March 2015, the complainant wrote to the Council and requested information in the following terms:

*"Following your failure to respond appropriately to my recent requests for information and your ongoing obduracy you leave me with no choice but to make this Formal Request under the Freedom of Information Act. I now request the following:*

- 1) Copies of all correspondence to and from SAL over the past four years including all electronic communications notes of telephone conversations etc.*
  - 2) Copies of all correspondence to and from CAA/DfT in regard to SAL over the past four years including all electronic communications and notes of conversations etc.*
  - 3) Copies of all correspondence to and from Forestry Commission in regard to SAL over the past four years including all electronic communications and notes of conversations etc.*
  - 4) Copies of all correspondence to and from Environment Agency in regard to SAL over the past four years including all electronic communications and notes of conversations etc.*
  - 5) Copies of all correspondence to and from District Law in regard to SAL over the past four years including all electronic communications and notes of conversations, including the official Opinion in regard to the S106 compliance or otherwise.*
  - 6) Copies of all correspondence to and from Members of this Council including the Leader & Deputy Leader in regard to SAL over the past four years including all electronic communications and notes of conversations etc."*
5. The Council provided a substantive response to this request on 22 May. It refused to comply with the request which it said is vexatious under section 14 of the FOIA. To the extent that the request may be a request for environmental information under the EIR, it also refused to comply with the request on the grounds that it is manifestly unreasonable under regulation 12(4)(b).
6. Following an internal review the Council wrote to the complainant on 12 August. The reviewer said that they were not in a position to advise whether the Council's categorisation of the request as vexatious was correct.

7. The review addressed a request that the complainant had submitted to the Council's Chief Executive on 20 March 2015. This was a request for correspondence between the Chief Executive and the owner of Sywell Aerodrome Ltd (SAL). The complainant said in this correspondence that if he did not receive a response to this request, he would submit a more detailed one concerning SAL. The Chief Executive acknowledged the request of 20 March on the same day and said that he would respond fully the following week. He did not tell the complainant that the request was being handled under the FOIA and that he could expect a response within 20 working days.
8. On 25 March, the complainant submitted the more detailed request that is the subject of the current notice. The Chief Executive responded to the 20 March request on the same day. That request was refused. In its review of 12 August, the Council acknowledged that the reason the Chief Executive gave for refusing the earlier request was not clear, and that he appeared not to have appreciated that the request should have been treated as an FOIA request. The Council said that this matter had also been addressed in its response to the complainant of 22 May. In this correspondence, the Council said it refused the 20 March request under section 14(1), and that the exemption at section 36 of the FOIA (detrimental to effective conduct of public affairs) also applied to that request.
9. The reviewer considered that the complainant's more detailed request of 25 March could also be viewed as vexatious under section 14(1) because it appeared to have been sent out of frustration that his request of 20 March had been refused. It appeared to the reviewer that the Council had interpreted the 25 March request as a means to cause maximum disruption rather than a genuine desire to have the information in question. The reviewer told the complainant that it appeared that the complainant was using the FOIA to attempt to resolve the concerns he had about a runway at the Aerodrome to his satisfaction.
10. The internal review acknowledged that the Council had not responded to the request of 20 March or the request of 25 March within 20 working days.
11. During the Commissioner's investigation, the Council told the Commissioner that it considered that section 12 and section 42 of the FOIA also apply to the 25 March request, and its equivalents under the EIR. It advised the complainant accordingly in correspondence dated 16 November.

## **Scope of the case**

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12. The complainant contacted the Commissioner on 28 July 2015 to complain about the way his request for information had been handled.
13. The focus of the Commissioner's investigation has been the Council's reliance on section 14 FOIA and regulation 12(4)(b) EIRs in its response of 22 May to the complainant's request of 25 March. He has also considered the time it took to respond to this request. If necessary, he was prepared to investigate the Council's application of section 12 and section 42 to the request, and their equivalents under the EIR.

## **Reasons for decision**

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### **Is part of the information environmental?**

14. The Council considers that some of the information that the complainant has requested may be environmental information to which the EIR applies. Information is 'environmental' if it meets the definition set out in regulation 2 of the EIR. Environmental information must be considered for disclosure under the terms of the EIR rather than the FOIA. Under regulation 2(1)(c), any information on activities affecting or likely to affect the elements of the environment listed in regulation 2(1)(a) will be environmental information. The requested information relates to an airfield. The Commissioner considers it likely that at least some of the requested information will concern information and activities affecting the land and/or air listed at regulation 2(1)(a). The Commissioner therefore considers that it is appropriate to assume that the EIR would apply to at least part of the request.
15. The Council has referred to both the FOIA and EIR in its submission to the Commissioner and its correspondence with the complainant. This is because it would have to identify, retrieve and review any relevant information that it holds in order to ascertain what, if any, information falls under the EIR and what falls under the FOIA. However its initial position is that it is not obliged to comply with the request because it is vexatious and so it has not undertaken this process.

### **Section 10(1) of the FOIA and regulation 5(2) of the EIR**

16. Section 1(1) of the FOIA, and its equivalent under the EIR, says that when a public authority receives a request it must confirm or deny whether it holds the information and, if it does, the information must be communicated to the requester.

17. Section 10(1) and regulation 5(2) say that public authorities must comply with section 1(1) and its EIR equivalent promptly and within 20 working days of receiving the request.
18. In this case, the complainant submitted his request on 25 March and did not receive a response under the FOIA and EIR until 22 May, which is a clear breach of section 10(1) and regulation 5(2).

## **Background**

19. The Council has told the Commissioner that it considers that the request arises from a long campaign by the complainant against a new, all-weather runway that was constructed at Sywell Aerodrome in 2009. The proposals for the runway were first put forward well before 2004. The Aerodrome company made a planning application; permission was granted but this was overturned following a judicial review. A second application was made in 2004. This led to a long planning inquiry that finally resulted in the planning permission being granted by the Secretary of State in November 2007.
20. The Council says that the complainant has been very active in support of a local campaign group against the new runway. (The complainant disputes that such a campaign group exists.) The Council says he continued his campaign against the runway after it was built, with FOIA requests and legal action against both the Aerodrome company and the Council. An independent solicitor's report was commissioned. The FOIA requests were dealt with and, in order to properly address the concerns, the Council set up an internal working party of Councillors to address them. The working party included the complainant, who was also a Councillor up to 2015.
21. Following five meetings of the working party, a report was taken to the Council's Development Committee in May 2012. That Committee concluded that no further action should be taken, other than appropriate monitoring and to encourage the Aerodrome to reinstate a consultation committee. According to the Council, relations between the Council and the complainant did not improve and the complainant continued to pursue issues that had been extensively considered by the working party and the Development Committee. This led to the Council's Chief Executive taking a new report to the Council's Resources Committee in March 2015. That Committee again decided not to take further action other than to instruct the Chief Executive to pursue a constructive dialogue with Sywell Aerodrome Ltd. The complainant's first request of 20 March concerned correspondence between the Chief Executive and the owner of the Aerodrome.

22. The Council says that its handling of the new runway issue at SAL was taken to the Local Government Ombudsman (LGO) in 2015 by the campaign group. Although the Ombudsman's report is not currently available, the Council considers it is likely to be favourable to the Council.
23. The Council has told the Commissioner that the complainant is a private pilot and that he has had what the Council describes as "severe personal differences" with the owner of Sywell Aerodrome.
24. In the analysis that it has provided to the Commissioner, the Council confirmed that the request covers material that is likely to be environmental information, to which regulation 12(4)(b) of the EIR applies and other information, to which section 14(1) of the FOIA applies.

### **Section 14(1) of the FOIA and regulation 12(4)(b) of the EIR**

25. 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.

### **Section 14(1) – vexatious requests**

26. Section 14(1) of the FOIA says that a public authority is not obliged to comply with a request for information under the FOIA, if that request is vexatious.
27. The term "vexatious" is not defined in the FOIA. 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 requests. In short they include:
  - Abusive or aggressive language
  - Burden on the authority
  - Personal grudges
  - Unreasonable persistence
  - Unfounded accusations
  - Intransigence
  - Frequent or overlapping requests
  - Deliberate intention to cause annoyance
28. 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.

29. The Commissioner's guidance suggests that, if a request is not patently vexatious, the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. In doing this the Commissioner considers that a public authority should weigh the impact of the request upon it and balance this against the purpose and value of the request.
30. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request. In this case, the Council notes that in deciding whether a request is vexatious, the motive and past history may be taken into account, and that evidence of that motive may be evidence from which vexatiousness may be inferred. The Council acknowledges that if the purpose of a request is to receive important information that ought to be publicly available, then it should nevertheless be disclosed.

### **The Council's submission**

31. The Council says that it considers that the complainant's reference to "recent requests" in his introduction to the current request is a reference to his request of 20<sup>th</sup> March. The request that followed and which is the subject of this notice, is for what it says is an extensive volume of information.
32. It considers that, because of the complainant's experience as a Councillor, the complainant would know that responding to this request would put the Council to considerable inconvenience. This was especially the case at the time the request was submitted because elections were ongoing and the Head of Planning and Local Development, who had dealt with most of the matters concerned, had left. In addition, a Council committee and working party, in which the complainant participated, had recently considered the matters that are the subject of the request.
33. In the Council's view, the complainant's motive for the request was vengeful. It was retaliation for what the Council says was the justified refusal of the previous request, and its main aim was to make work for the Council at a time when its workload was already high. The Council says this is an improper motive. It was vengeance for another decision, in the terms of Lady Justice Arden's finding in *Dransfield* ([2015] EWCA Civ 454), namely:

*"If it happens that a relevant motive can be discerned with a sufficient degree of assurance, it may be evidence from which vexatiousness can*

*be inferred. If a requester pursues his rights against an authority out of vengeance for some other decision of its, it may be said that his actions were improperly motivated but it may also be that his request was without any reasonable foundation."*

34. The Council has also told the Commissioner that the request could also be considered to be obsessive. This is because it appears to be in pursuit of matters that have been extensively and openly considered by the Council's committees over a number of years. The complainant has participated in these committees.

### **The complainant's arguments**

35. The complainant told the Commissioner that he considers that the information he has requested amounts to approximately 10 documents, at most.

### **Is the request vexatious?**

36. The Commissioner has considered the Council's submission. He notes that the complainant appears to have submitted his request of 25 March at 11:24. At that point his request of 20 March had not received a substantive response. A response to this request came later the same day – 25 March – at 15:50 by means of an email from the Chief Executive to the complainant. The Chief Executive refused the 20 March request. The Chief Executive did not refer to the FOIA in this email, but said that he was not prepared to let the complainant have the correspondence he had requested. Formal refusal under the FOIA of the 20 March and the 25 March requests came in the Council's later correspondence to the complainant of 22 May.
37. The Commissioner does not consider it is correct to say – as the Council has done – that the complainant submitted his request of 25 March because his request of 20 March was refused. At the point he submitted his second request, his request of 20 March had not been refused as a response to this request did not arrive until later the same day. However, the complainant had said in his 20 March request that if he did not receive a response to this request, he would submit a more detailed one. Although this request was acknowledged the same day, he had not been told that he could expect a response within 20 working days. Therefore, by the morning of 25 March, when the complainant had not received a response to his 20 March request, he submitted his second, more detailed, request.
38. The Commissioner does not accept the Council is quite correct when it claims that the complainant submitted his more detailed request because the earlier request was refused. And he considers that the

shortcomings in the Council's response of 20 March may have contributed to the complainant's later request. Nonetheless, he is persuaded that there may be an element of vengefulness behind the complainant's request of 25 March. This is, first, because in his request of 20 March, the complainant alludes to the fact that if he does not receive the information he has requested he will submit a more detailed request – and this is ultimately what happened.

39. Second, from an email to the Council in June 2015 it appears that the complainant's principal dissatisfaction is that, by refusing his requests of 20 and 25 March, the Council has breached an action that he says it agreed at a particular Council Development Committee meeting. This was that he would be notified of any development following the Chief Executive's meetings with SAL – see paragraph 21. Correspondence from the complainant to the Commissioner on 11 October 2015 and with the Council in December seems also to suggest that he considers that the Chief Executive has not had any meetings with SAL despite the minuted item and that what he considers to be agreed planning conditions have therefore not been enforced.
40. The complainant's request of 20 March was for copies of correspondence between the Chief Executive and the owner of Sywell Aerodrome. This request would appear to relate to the concern outlined above. It is less clear, however, how his request of 25 March is directly relevant to this matter. In the Commissioner's view, this adds weight to the possibility that the 25 March request had more of a vexatious motive.
41. The Commissioner has gone on to consider whether the request meets any of the remaining criteria for vexatiousness outlined at paragraph 27; principally whether the request could be considered to be obsessive, or unreasonably persistent.
42. The matter to which the request broadly relates – the new runway at Sywell Aerodrome – has been ongoing for over ten years. The Commissioner notes that the Council says that the complainant, who is against the new runway, has been corresponding with the Council and participating in related groups and committees for nine of those years.
43. Since 2004, concerns about the new runway have been explored through a number of means, including a planning inquiry, a working party and consideration by a Development Committee and a Resources Committee. These Committees concluded that no significant action was needed regarding the runway. In 2015, a complaint was submitted to the LGO about the Council's handling of the new runway. The Commissioner notes that, although the Council says that the LGO is likely to find in the Council's favour, the LGO's report had not been

released at the time of the request. He has therefore not included this particular matter in his deliberations.

44. The Commissioner agrees with the Council, however, that concerns about the runway have been extensively and openly considered over the last ten years or more. None of the concerns appear to have been substantiated and minimum further action has been necessary. In his view it is significant that the complainant has been actively involved in exploring these matters, for example through his membership of the working party. The Council has provided to the Commissioner copies of working party meeting minutes from 8 May 2012, a Development Committee report of 29 May 2012, Council meeting minutes of 26 June 2012, a Development Committee report of 18 March 2015 and a Council meeting of 18 March 2015. The meeting minutes provide evidence of the complainant's longstanding involvement – as participant or speaker – in discussions about the runway.
45. The Commissioner considers it is therefore likely that the complainant has a very good understanding of the issues and concerns surrounding the new runway, the reasoning behind decisions taken, and the positions of the various parties and agencies involved in considering these concerns. He notes that the Council has told him that the complainant is likely to have already received at least some of the information he has requested as a result of his former role as a Councillor and as a member of the working party.
46. The Commissioner has considered the evidence with which he has been provided and he agrees with the Council that the request of 25 March 2015 can be considered a vexatious request, and that the Council has correctly applied section 14(1) and regulation 12(4)(b) to it. The complainant opposed the proposal for the all-weather runway at Sywell Aerodrome and has continued to oppose it since it was built and licenced for use in 2010. The Commissioner has also noted the Council's claim that the complainant has a poor relationship with the owner of the Aerodrome.
47. It is evident to the Commissioner that the complainant is not satisfied with the outcome of various investigations into the runway. These have not revealed concerns of such significance that they have prevented the runway's construction and the runway is now built and operational. Despite the matter of the new runway having been ongoing for more than ten years, the complainant remains dissatisfied. He appears to want investigations into the runway to continue when, to all intents and purposes, the matter has been resolved.
48. Finally, the Commissioner considers that there is an element of vengeance behind the request. It was submitted as a result of the

complainant's earlier, and less complex, request not receiving a response he considered to be satisfactory. In addition, the subject of the request does not appear to clearly address what the complainant has suggested to the Commissioner and the Council is his primary concern, namely that one or more of what the complainant considers to be planning conditions have not been enforced. This adds weight to the likelihood that the complainant was motivated to disrupt the Council when he submitted his request of 25 March, during the election period.

### **Considering any additional obligations under the EIR**

49. As previously discussed, the requested information may include information that is environmental information. The Council says that it is not obliged to comply with these elements of the request in line with exception under regulation 12(4)(b) because they are manifestly unreasonable.
50. The EIR requires a public authority to apply a public interest test [in accordance with regulation 12(1)(b)] before deciding whether to maintain the exception. In contrast to the FOIA, regulation 12(2) of the EIR specifically says 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.
51. The Council acknowledges that there is an obvious public interest in dealing with all matters relating to Sywell Aerodrome in an open manner.
52. The Council says that, as a vexatious request, the request has no real value and is designed to cause disruption and inconvenience. In correspondence to the complainant on 16 November, the Council suggested that the requested information (if held) is archived in a manner that is not indexed in a way that would enable it to be located quickly. It estimated that it would take one experienced clerical officer more than 20 hours to review all the archived material and locate any relevant information. The Council says that there is greater public interest in making sure that it does not divert its scarce resources in order to comply with the request, at a time when those resources are substantially diminished. In the Council's view, this takes precedence over openness in matters that are already largely in the public domain through consideration of the matters concerned over the period of the request being set out in public committee papers.
53. The Commissioner agrees that the public interest in the matter of the runway has been sufficiently met through the reports on the Aerodrome and the runway, and general related information, that are published on

the websites of Wellingborough Council (and other nearby Councils) and the Aerodrome. Since no significant concerns have been identified with regard to the runway, the Commissioner considers that, in this case, the public interest in maintaining the exception outweighs the public interest in complying with any elements of the request that may be covered by the EIR.

## **Other matters**

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54. In its internal review of 12 August, the reviewer said that they were not in a position to advise whether the Council's categorisation of the request as vexatious was correct, because of the complex background of the case. In the Commissioner's view, this position is somewhat inadequate. The purpose of an internal review is precisely to review the public authority's handling of a request and any procedural sections or exemptions that have been applied to a request, as necessary. In line with paragraph 125 of his published guidance<sup>1</sup>, the Commissioner considers that this aspect of the Council's review would have been more satisfactory if it had either explained to the complainant why it considered his request was vexatious. Alternatively, the Council could have told the complainant that, given it considered the request to be vexatious, it was not prepared to provide further explanation and had referred the complainant to the Information Commissioner instead.

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

## 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@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.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 .....**

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**