

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 1 March 2022

**Public Authority:** Witherley Parish Council

**Address:** clerk@witherleyparishcouncil.gov.uk

#### **Decision (including any steps ordered)**

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1. The complainant has requested information with regards to a Neighbourhood Development Plan. Witherley Parish Council (the council) provided some information, then following an internal review request the council issued a refusal notice citing section 14(1) of the Freedom of Information Act (the FOIA) – vexatious request.
2. The Commissioner's decision is that the request fell under the EIR and accordingly found that regulation 12(4)(b) of the EIR – manifestly unreasonable - was engaged and that the public interest favours maintenance of the exception.
3. The Commissioner does not require the council to take any steps, but has set out some points in the 'other matters' section of this decision notice for both parties to note.

## Request and response

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4. On 11 May 2021 the complainant made the following information request to the council:

"I would like to submit a Freedom of Information request for:-

1. The minutes taken by the [name redacted] during the meeting with Highways England/ Agency in May 2019
  2. The subsequent report written by the [name redacted] drawing the findings of the meeting together.
  3. Evidence of this report being circulated to all Steering Group members.
  4. Evidence this report was discussed and minted at a Steering Group meeting.
  5. Details of any contact with any representative of Highways England/ Agency since May 2019 on any Witherley Parish Matter, including date, time duration of contact, who was contacted and details discussed during the contact."
5. The complainant then complained to the Commissioner on 10 June 2021 that no response had been received from the council.
6. The Commissioner wrote to the council on the 18 June 2021 asking it to respond to the request. The council responded to the complainant on 23 June 2021.
7. For part 1 to 3 of the request, the council advised that there is no document. For part 4 of the request, the council stated that the Steering Group meeting minuted as 14 May 2019 is available online. For part 5 of the request, the council applied section 14(1) of the FOIA to refuse to comply as it considered it to be vexatious.
8. On 28 June 2021 the complainant requested the council to conduct an internal review. With regards to parts 1 to 3, the complainant asked for a further explanation in relation to the response that no information falling within the scope of these parts of the request was held.
9. For part 5 of the request, the complainant disputed the council's application of section 14(1) of the FOIA.
10. On 14 July 2021, the council issued an internal review response stating that all the complainant's recent requests for information were being refused under section 14(1) of the FOIA as vexatious.

## Scope of the case

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11. The complainant contacted the Commissioner disputing the council's position that her request is vexatious.
12. The scope of the case is for the Commissioner to firstly determine whether any or all of the information request falls within the EIR and then determine whether the council was correct to refuse the request under section 14(1) of the FOIA or regulation 12(4)(b) of the EIR - manifestly unreasonable.

## Reasons for decision

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### Is the requested information Environmental Information?

13. The Commissioner has first considered whether the requested information would constitute environmental information as defined by regulation 2(1) of the EIR.
14. In this case, the request is for information in relation to a neighbourhood plan<sup>1</sup>. The Commissioner's understanding is that a neighbourhood plan is by its very nature related to the development of land.
15. The Commissioner is therefore satisfied that the request does fall under the EIR. Regulation 2(1)(c) with (b) is relevant to the request. The information requested would relate to measures affecting, or likely to effect the elements of the environment, namely the landscape. Therefore the Commissioner will go on to consider whether the request is manifestly unreasonable under regulation 12(4)(b) of the EIR.

### Regulation 12(4)(b) of the EIR – Manifestly unreasonable

16. Although there is no definition of 'manifestly unreasonable' under the EIR, the Commissioner's opinion is that 'manifestly' implies that a request should be obviously or clearly unreasonable. 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.

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<sup>1</sup> [Neighbourhood Development Plan | Witherley Parish Council](#)

17. The Commissioner has therefore considered the extent to which the request was manifestly unreasonable on the ground that it was vexatious.
18. The term vexatious is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the Information Commissioner v Devon CC v Dransfield<sup>2</sup>. The Tribunal commented that vexatious could be defined as the “manifestly unjustified, inappropriate or improper use of a formal procedure.” The Tribunal’s definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
19. In the Commissioner’s view, the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
20. The Commissioner has identified a number of “indicators” which may be useful in identifying vexatious requests. These are set out in his published guidance<sup>3</sup>. 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 the case will need to be considered in reaching a judgement as to whether a request is vexatious.
21. This request and all the other requests referred to in this decision notice relate to a Neighbourhood Development Plan (NDP). The Commissioner, from reading the council’s response and complainant’s submissions, notes that there is division and disagreement between the council and a number of residents in relation to the NDP, in particular concerning the amount of information that has been made available to the public.
22. The council submits to the Commissioner that a disproportionate burden has been placed on it by the sheer number and frequency of requests it has received relating to the NDP, including from the complainant.
23. It has referenced the Tribunal case of Betts v ICO, (EA/2007/0109 19 May 2008) in which the Tribunal stated “Although the latest request was

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<sup>2</sup> [Information Commissioner -v- Devon County Council and Dransfield | Courts and Tribunals Judiciary](#)

<sup>3</sup> <https://ico.org.uk/media/1198/dealing-with-vexatious-requests.pdf>

not vexatious in isolation, the tribunal considered that it was vexatious when viewed in context. It was a continuation of a pattern of behaviour and part of an ongoing campaign to pressure the council. The request on its own may have been simple, but experience showed it was likely to lead to further correspondence, requests and more complaints. Given the wider context and history the request was harassing, likely to impose significant burden and obsessive."

24. The council also took into consideration Dadswell vs ICO (EA/2012/0033 29 May 2012) which stated "...anyone being required to answer a series of 93 questions of an interrogatory nature is likely to feel harassed by the sheer volume of what is requested".
25. The council has stated that the council's only employee is its clerk who is contracted to work 48 hours per month, and had been inundated with information requests from the complainant and other members of a group of residents, which the council states has spread rumours of council corruption, lies and deceit on social media sites. The Council also stated that this group had publicly vowed to "bring the council down".
26. The council has provided the Commissioner with a spreadsheet recording the amount of requests received. It records that in May 2021 the complainant made 10 information requests to the council.
27. This spreadsheet records approximately 24 information requests made by the complainant within 9 weeks. That being from 11 May 2021 up to the date the council issued its refusal under section 14(1) of the FOIA on 14 July 2021.
28. The complainant submits that she has made 21 different information requests to the council within this time period.
29. Either way, the Commissioner sees that this as a high volume of correspondence for any size of public authority to receive within such a short frame of time, let alone a parish council with one employee.
30. With regards to this request, the Commissioner can only consider the circumstances of the case up to the final date that the response to the request was due, that being 20 working days from the date the request was received. The spreadsheet records 12 information requests being made by the complainant within the 20 working day response time.
31. The Commissioner accepts that this frequency of requests being received whilst trying to respond to the first request within the required 20 working days would place a strain on the council's ability to respond to the request and carry out its other duties.

32. Submitting frequent and overlapping correspondence before a public authority has had an opportunity to address a requester's earlier enquiries is listed as one of the identifiers in the Commissioner's guidance on vexatious requests.
33. The council has highlighted that it has struggled to respond to the requests within the required 20 working days due to the volume of the requests being received.
34. The complainant has told the Commissioner that every document she has requested should have been in the public domain and available to view on the council's website since April 2017 onwards.
35. The complainant also states that "...the reason for the high level of non-transparency is due to the allocation of houses within the NDP, there are certain individuals who may of chosen to attempt to influence the location of the development(s). I was an original member of the NDP Steering Group so I have first hand experience these documents should be available to all."
36. The Commissioner is aware of a consultation response by the Local Borough Council, Hinckley & Bosworth Borough Council (HBBC) to the council, published on the council's website on 27 January 2021 titled "Consultation response to the draft Witherley Neighbourhood Plan – Pre Submission (Regulation 14)".<sup>4</sup>
37. The Commissioner's understanding is that once there is a draft plan of the neighbourhood plan, it must be subjected to pre-submission consultation (Regulation 14). The proposed plan will be submitted to the local planning authority - HBBC in this case - which will check that the necessary documents have been provided.
38. The Commissioner has viewed this HBBC consultation response, and on page 23 it finds that relevant information has not been made public and states that the council does "now have time between the close of this consultation and the submission of the plan at Regulation 15 to ensure full transparency and openness."
39. The council was still within those timeframes to make the relevant information available when the requests were received from the complainant.

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<sup>4</sup> [Witherley Neighbourhood Development Plan | Hinckley & Bosworth Borough Council \(hinckley-bosworth.gov.uk\)](https://hinckley-bosworth.gov.uk/witherley-neighbourhood-development-plan)

40. In the Commissioner's view, the HBBC suggested what seems to be a reasonable approach for the council to take in order to achieve transparency and openness.
41. The Commissioner acknowledges that the complainant does not consider she has received all the information requested, he also accepts that things such as a NDP, which has a direct impact on residents, will cause a council to receive correspondence and information requests in relation to it, and that there will be opposing views to the council's.
42. The Commissioner can see how the findings, about openness and transparency, in HBBC's 27 January 2021 consultation report about the publishing of minutes and agendas would generate a higher volume of correspondence from the public to the council, including requests for recorded information.
43. However, the Commissioner needs to balance the proportionality and burden being placed on a public authority, in having to deal with information requests, as well as the impact it can have on the public authority's ability to carry out its other functions.
44. In the Commissioner's view, the volume of requests received in the timeframe described in this decision notice appears to have overwhelmed the council. A parish council with one employee does not have the same resources as a larger council.
45. The council appears to have tried to provide some information to some of the requests before applying section 14(1) of the FOIA. The council is of the view that the information that is required has now been placed on its website.
46. At the time of the request, and up to the council issuing its refusal notice stating that the request was vexatious, the council was still within the timeframe suggested by HBBC for the council to set about ensuring full openness and transparency.
47. The Commissioner has therefore taken in to account whether the volume of requests for information from the complainant is disproportionate and unjustified when considering HBBC had already suggested a timeframe for the council to make the relevant information available.
48. On this basis, the Commissioner accepts the council's position that it has been placed under a disproportionate and unjustified level of disruption and that the aggregation of requests has impacted on its ability to function.



49. The Commissioner therefore finds that the complainant's information request was manifestly unreasonable and so the council was able to rely on regulation 12(4)(b) of the EIR to refuse to comply with it.

**Regulation 12(1)(b) of the EIR – Public interest test**

50. 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) of the EIR before deciding whether to maintain the exception.
51. 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.

*Public interest arguments in favour of disclosure*

52. The council has told the Commissioner it recognises that disclosure of environmental information helps to promote transparency in public authorities' decision making.
53. The complainant is of the view that the HBBC findings of the council's handling of the NDP gives clear justification for the information requests being made as this information should have already been made public by the council over the past three years.

*Public interest arguments in maintaining the exception*

54. The council considers the burden of the requests received overrides its duty to comply with the request in question, as it is disproportionately diverting the clerk away from her normal duties which is having a detrimental impact on ensuring proper administration of the council and that it is in the public interest that the council is able to conduct its other daily functions.
55. It accepts and acknowledges that mistakes were made, but since the HBBC recommendations following the Regulation 14 consultation in January 2021, it says that it has updated its website accordingly.



### *Conclusion*

56. The Commissioner accepts that there is a strong interest in disclosure of environmental information in general as it promotes transparency and accountability for the decisions taken by public authorities relating to environmental matters.
57. The Commissioner recognises the complainant's reasons for making the requests as being legitimate, in terms of ensuring the council are conducting the correct process and that it is transparent and open about how decisions are being made in relation to the NDP.
58. The Commissioner also has to consider that at the time the request was made, the HBBC had already given a seemingly reasonable viable process and timeframe for the council to set about ensuring openness and transparency.
59. The Commissioner has to also consider any burden placed on the council to deal with the amount of correspondence from the complainant. He is of the opinion that the level of correspondence has placed a disproportionate burden on the council and considering that this is a parish council, he has to recognise it has fewer resources than a larger council to deal with high levels of correspondence. The Commissioner is also of the opinion that it is not in the public interest to overburden a council with information requests to the point that this has a detrimental effect on its other public functions.
60. A key question here is whether the public interest in complying with the request is substantial enough to justify the severe impact placed on the council by responding to such a volume of correspondence.
61. The Commissioner has concluded that the public interest in maintaining the exception outweighs the public interest in disclosure of the information for this request as he considers the burden being placed on the council by the aggregated volume of correspondence received from the complainant outweighs the public interest in complying with this request. Therefore the council was not obliged to comply with the complainant's request.
62. Regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions. As stated in the Upper Tribunal decision *Vesco v Information Commissioner* (SGIA/44/2019):  
  
"If application of the first two stages has not resulted in disclosure, a public authority should go on to consider the presumption in favour of disclosure..." and "the presumption serves two purposes: (1) to provide the default position in the event that the interests are equally balanced

and (2) to inform any decision that may be taken under the regulations” (paragraph 19).

63. As covered above, in this case the Commissioner’s view is that the balance of the public interests favours the maintenance of the exception, rather than being equally balanced. This means that the Commissioner’s decision, whilst informed by the presumption provided for in regulation 12(2), is that the exception provided by regulation 12(4)(b) was applied correctly.

### **Other matters**

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64. The Commissioner wishes to make the point that, whilst the above decision only relates to the information request that is the focus of this notice, to the extent that similar factors apply in relation to other requests on related subject matter, the analysis in this notice can be taken as giving an indication as to what the Commissioner’s conclusion would be in those other cases.

## Right of appeal

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

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

66. 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.
67. 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**  
**Group Manager**  
**Information Commissioner's Office**  
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