

Freedom of Information Act 2000 (Section 50) Environmental Information Regulations 2004

Decision Notice

Date: 22 February 2010

Public Authority: Wiltshire County Council
Address: County Hall
Blythesea Road
Trowbridge
Wiltshire
BA14 8JN

Summary

The complainant made a number of requests to Wiltshire County Council between 4 May 2008 and 26 May 2008. The Council refused to provide any information requested, citing section 14(1) of the Freedom of Information Act (the "Act"). The Council subsequently applied regulation 12(4)(b) of the EIR in respect of three of these requests, and section 14(1) of the Act in respect of the remainder. The Commissioner concluded that it was reasonable for the Council to apply section 14(1) of the Act. The Commissioner also concluded that the Council had correctly applied regulation 12(4)(b) of the EIR, and that the public interest in maintaining the exemption outweighed the public interest in disclosing the information. However, the Commissioner found that the Council breached section 17(7) of the Act as it failed to issue a notice containing particulars of the Council's complaints procedure. The Commissioner also found that the Council breached regulation 11 of the EIR for failing to conduct a proper reconsideration, and regulation 14 of the EIR for not issuing a refusal under EIR during its handling of three of the requests.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.
2. The Environmental Information Regulations (EIR) were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information Commissioner (the "Commissioner"). In

effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR.

The Request

3. The complainant submitted six requests for information to the Council between 4 May 2008 and 26 May 2008. The details of these requests are set out in Annex A, together with the Council's assigned reference numbers. The Council's reference numbers will be used throughout this notice. The complainant has stated that some of the requests are interlinked, and relate to rights-of-way issues. The Commissioner considers that RFI 965 and 966 relate to such issues, whilst RFI 980 relates to a boundary survey. The Commissioner considers that RFI 960 and 967 relate to a letter sent to a third party, the author of which is disputed. The Commissioner has not considered who sent the letter in question because he considers this issue to be outside the scope of his investigation. The Commissioner considers that RFI 968 relates to the complainant's own personal data.
4. On 27 May 2008, the Council acknowledged the complainant's requests, and indicated that the requests were being considered under the Act and the EIR.
5. On 30 May 2008, the Council issued a notice stating that it considered section 14(1) of the Act to be applicable to all six requests.
6. The Council stated that all six requests form part of a pattern of behaviour which it considered unreasonable, and which placed an unacceptable burden on the Council's ability to operate efficiently. The Council also referenced the need to protect officers and members of the Council from "the effects of unreasonable behaviour". The Council also outlined its intention to only respond to the complainant on "substantive new issues" for the same reasons.
7. On 2 June 2008, the complainant requested a review of the Council's decision to refuse the requests. On 6 June 2008, the Council issued the findings of its internal review, and stated that it "[did not] intend to address any issues raised in this letter and no hearing will be arranged for [the complainant] to address these issues". The Council also notified the complainant that his "course of redress is with the Local Government Ombudsman or the Information Commissioner".

The Investigation

Scope of the case

8. On 31 May 2008, the complainant contacted the Commissioner. The complainant asked the Commissioner to seek the Council's justification in applying section 14(1) of the Act in relation to all six requests. The Commissioner did not commence his investigation until he had received confirmation that the

complainant had exhausted the Council's complaints procedure, which the complainant provided on 18 July 2008.

9. Given the nature of the information requested, the Commissioner also considered whether the Council had applied the correct access regime in relation to each of the remaining five requests.
10. During the course of his investigation, the Commissioner determined that RFI 968 should have been considered under the Data Protection Act 1998. The Council accepted this view. As such, the Commissioner does not consider that RFI 968 falls within the scope of this investigation.

Chronology

11. Between 11 February and 3 December 2009, the Commissioner wrote to the Council on a number of occasions requesting representations to support its application of section 14(1) of the Act and, latterly, the exception at regulation 12(4)(b) of the EIR. In particular, the Commissioner asked for details of any previous requests for information that it had received from the complainant and the burden to which the Council had referred. The Commissioner also asked for further representations from the Council regarding the public interest consideration under regulation 12(1)(b) of the EIR.
12. On 4 January 2010, the Council provided final representations in relation to the applicable access regime. In this correspondence, the Council clarified that it considered RFI 960 and 967 fell within the scope of the Act, and RFI 965, 966 and 980 fell within the scope of the EIR.

Analysis

Substantive Procedural Matters

13. The full text of the sections and regulations referred to can be found in the Legal Annex at the end of this Notice.

Relevant Access Regime – RFI 960 and 967

14. The Commissioner has considered whether the Council was correct to consider RFI 960 and 967 under the Act.
15. The Commissioner has received representations from the complainant and the Council as to the matter referred to in RFI 960. The Commissioner is satisfied that "this matter" (the subject of the request) refers to a letter which had been sent to a third party, and apparently referred to a right of way issue. The author of the letter is disputed. Based on representations received from both parties, the Commissioner is also satisfied that the letter in question is also the subject of RFI 967.

16. The Commissioner notes that the letter in question apparently referred to a right of way issue. However, in view of representations received from both parties, the Commissioner considers that RFI 960 and 967 are for recorded information held in relation to the letter itself, rather than the right of way issue referred to in the letter in question.
17. As such, the Commissioner is satisfied that RFI 960 and 967 cannot be considered to be requests for environmental information. As such, the Commissioner considers the Act to be the correct access regime in relation to RFI 960 and 967.

Relevant Access Regime – RFI 965, 966 and 980

18. The Commissioner has considered whether the Council was correct to consider RFI 965, 966 and 980 under the EIR.
19. The Commissioner is mindful of the EU Council Directive 2003/4/EC, which is implemented into UK law through the EIR. A principal intention of the Directive is to allow the participation of the public in environmental matters. Therefore, the Commissioner considers the phrase “*any information ... on*”, as contained in the definition of environmental information under regulation 2, should be interpreted widely. It will usually include information concerning, about or relating to measures, activities and factors likely to affect the state of the elements of the environment.
20. In each request, the Commissioner considers that the information requested falls within the definition of environmental information as set out in regulation 2(1)(c) of the EIR:

“'environmental information' has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material on—

(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) and (b) as well as measures or activities designed to protect those elements.”

21. In reaching this decision, the Commissioner has considered the nature of the information requested:
 - In the case of RFI 965, the complainant requested information on the Council's procedures relating to obstructed rights-of-way generally;
 - In the case of RFI 966, the complainant requested information relating to Amesbury 29 bridleway, including information relating to the diversion of Amesbury 29 bridleway.
 - In the case of RFI 980, the complainant requested information relating to a boundary survey conducted in 2007.

22. The Commissioner considers that each request relates to written information on a measure which affects or is likely to affect the elements referred to in regulation 2(1)(a) – in particular, land and landscape. The Commissioner also considers that each request relates to written information on a measure designed to protect those same elements.
23. Therefore, the Commissioner is satisfied that RFI 965, 966 and 980 fell to be considered under the EIR.

Section 14(1) of the Act – ‘vexatious requests’

24. The Commissioner has considered whether the Council was correct in its application of section 14(1) of the Act in relation to RFI 960 and 967.
25. Section 14(1) of the Act provides that a public authority does not have the duty to comply with a request where it may be considered vexatious. As a general principle, the Commissioner considers that this section of the Act is intended to serve as protection to public authorities against those who may abuse the right to seek information.
26. The Commissioner’s guidance on section 14 states the following:

“Deciding whether a request is vexatious is a balancing exercise, taking into account the context and history of the request. The key question is whether the request is likely to cause unjustified distress, disruption or irritation. In particular, you should consider the following questions:

 - a) Could the request fairly be seen as obsessive?
 - b) Is the request harassing the authority or causing distress to staff?
 - c) Would complying with the request impose a significant burden in terms of expense and distraction?
 - d) Is the request designed to cause disruption and annoyance?
 - e) Does the request lack any serious purpose or value?”¹
27. The Commissioner is mindful that it is the request, and not the requester which is judged to be vexatious.

Could the request fairly be seen as obsessive or manifestly unreasonable?

28. Where a request can fairly be seen as obsessive, the Commissioner is of the view that there is a strong indication that the request will also be vexatious. The Commissioner considers determining factors in deciding whether a request is obsessive will include the volume and frequency of requests. As such, the context and history of the requests is also particularly relevant because it is unlikely that an isolated request will be considered obsessive.
29. In the Council’s refusal notice dated 30 May 2008, the Council stated that complainant’s requests formed “part of a pattern of behaviour which we [the

¹ http://www.ico.gov.uk/what_we_cover/freedom_of_information/guidance.aspx

- Council] consider to be unreasonable". In further representations to the Commissioner, the Council confirmed that the complainant's requests formed part of a larger body of correspondence. The Council's view is that the RFI 960 and 967 can be considered obsessive when viewed as part of that body of correspondence.
30. To support its view, the Council has provided the Commissioner with a spreadsheet listing all correspondence it received from the complainant between October 2006 and February 2009. The Commissioner notes that during this period, the Council received over 200 pieces of correspondence from the complainant. The Commissioner has viewed a sample of this correspondence.
 31. The Commissioner noted that the correspondence related to a variety of subjects. However, the Commissioner also noted examples of linked requests and correspondence. In particular, the Commissioner noted that a significant proportion of the correspondence appears to relate to rights-of-way generally, and specifically to bridleways. The Commissioner has counted at least 40 pieces of correspondence detailed on the spreadsheet which relate to these issues, and 20 pieces of correspondence which have been sent to the Right of Way Officer, Manager or section.
 32. The Council stated that between October 2006 and February 2009, it received many requests for information which were responded to informally and outside the provisions of the Act. The Council has stated that during this period, it addressed 11 of those requests for information under the provisions of the Act.
 33. The Commissioner considers that a request for information which meets the requirements set out in section 8 of the Act should be addressed under the provisions of the legislation. Therefore, in reaching a decision as to whether RFI 960 and 967 can fairly be seen as obsessive, the Commissioner is mindful that the Council's approach to dealing with requests outlined in paragraph 31 may have contributed to the complainant's submission of further correspondence.
 34. However, notwithstanding the Council's decision to respond to requests "outside the legislation", the Commissioner is also mindful of the following Information Tribunal decisions:
 - In the case of *Coggins v Information Commissioner (EA/2007/0130)*, the Tribunal considered that "the number of FOIA requests, the amount of correspondence and haranguing tone of that correspondence indicated that the Appellant was behaving in an obsessive manner".
 - In the case of *Betts v Information Commissioner (EA/2007/0109)*, the Tribunal considered not just the request, but the background and history to the request as part of a long drawn out dispute between the parties. The request was considered vexatious when viewed in context as it was a continuation of a pattern of behaviour.
 35. The Commissioner's view is that, when considered in isolation, RFI 960 and 967 may be viewed as reasonable requests. Furthermore, the Commissioner also acknowledges that the inadequate handling of requests for information may have

contributed to the receipt of further correspondence. However, when placing RFI 960 and 967 in the context of the significant body of correspondence referred to in paragraph 29, and, more specifically, the correspondence on rights of way issues referred to in paragraph 30, the Commissioner is satisfied that the requests form part of a pattern of behaviour which could fairly be seen as obsessive.

Is the request harassing the authority or causing distress to staff?

36. In determining whether a request has the effect of harassing an authority or causing distress to staff, the Commissioner's guidance states that the focus should be on the likely effect of the request seen in context, and not on the intention of the requester. The Commissioner is of the view that the relevant question is whether having to deal with the request would be distressing or harassing, regardless of the subject of the request.
37. The Commissioner considers that relevant factors could include the volume and frequency of correspondence, the use of hostile, abusive or offensive language, an unreasonable fixation on an individual member of staff, or mingling requests with accusations or complaints.
38. The Council stated that it considers the tone and manner of the complainant's correspondence to have been inappropriate. The Council has specifically noted the way in which the language used by the complainant in correspondence since 30 May 2008 has become increasingly personal and threatening. The Council stated that this correspondence has contained allegations of corruption directed at senior and junior Council staff, which had a distressing effect on these members of staff.
39. In particular, the Council highlighted the following examples of correspondence contained within the sample viewed by the Commissioner. The following examples were sent to members of staff:
 - "You must really imagine I'm something of a thickhead. Rather than talking about 'entitlement', 'lawfully' or 'constitutionally', it would be far more sensible to think in terms of 'politeness', 'good manners' and 'personal integrity' – concepts which seems wholly alien to the prevailing culture in County Hall";
 - "It's surely a very exceptional kind of councillor who declines a particular personal plea for assistance, and mischievously delegates the matter to offensive bureaucrats without any explanation";
 - In reference to a particular Councillor, the complainant questioned their commitment to assisting "local citizens", ending his sentence with the phrase "power corrupts";
 - "Officers are wilfully supplying members of the public with information which is known to be invalid and misleading, whilst Councillors are being systematically deceived and misadvised on a wide range of regulatory matters...I would strongly suggest that you consider the serious implications with regard to your own professional obligations for the observance of ethical correctness";

- “It is such a pity that a couple of [Council] principle officers are finding me a bit scary ; it is even sadder that they attempt to emulate the fabled ostrich when danger is perceived. If only they would address the raised issue, I would quickly forgive them for past naughtiness. As the majority of my [Council] contacts would happily testify, I’m really rather a pussycat – friendly, fair, courteous and exceptionally cheerful. Moreover, the wisest ones would also acknowledge that, whatever I do, it’s always carefully targeted to achieve maximum benefit for all genuine parties. But, of course, when a cat is sorely abused, and its repeated warnings are imperiously ignored, then teeth and claws are quickly activated in self-defence”;

The Council also highlighted the following examples of correspondence sent to a Councillor, also contained within the sample viewed by the Commissioner:

- “It was once regarded as extremely discourteous just to pretend that a question hadn’t been posed – and it was equally rude to provide a response which was distracting, specious or disingenuous. Anyone behaving in such a manner would never get promoted to a position of seniority. Nowadays, however, it would seem that local government officers get promoted only if they are fully familiar with the black arts of devious rhetoric and deceitful mischief”;
- “As you know, I’m exceptionally easy-going. But if someone deliberately goes behind my back after I’ve specifically sought their assistance, and then helps to plunge the knife within my ribcage, then you can’t expect me to keep smiling. I request an explanation, and I want it fast”; the complainant signed this correspondence “best wishes”;

40. The Commissioner has noted a further, undated piece of correspondence which was not highlighted by the Council. This correspondence states:

- “It’s time for quiet reflection. What are your real priorities? When you’re unhappy with your lot, that’s not the best time to alienate your friends. A friend is someone who tells you when you’re going off the rails, and does his utmost to prevent it. Any enemy always tells you what you want to hear, and leaves you to your ultimate fate. When you’re ready to talk, just give me a call”.

41. As stated in paragraph 32, the Commissioner is mindful that any inadequate request handling on the part of the Council might have contributed to some extent to the submission of further correspondence by the complainant. The Commissioner is also aware that inadequate handling of requests may cause a complainant to air their frustrations in such correspondence. In this sense, the Commissioner is mindful that ‘persistent’ requests should not be labelled as vexatious requests.

42. However, in this case, the Commissioner considers that the language used in the examples outlined at paragraphs 38 and 39 appears to represent a more deep-seated grievance than frustration. The Commissioner also considers that the aggressive language could be threatening. Furthermore, the Commissioner does

not consider that inadequate handling of requests should result in individuals being subjected to the personal accusations of corruption or maladministration contained within the examples detailed above.

43. The Commissioner has noted the similarities between the circumstances of this case, and the Tribunal's views in *Gowers v Information Commissioner* (EA/2007/0014), in which the Tribunal stated:

“We make no findings as to whether the Appellant's various complaints and grievances against the Council were or were not well-founded, nor do we make any findings about whether the Appellant's research was or was not *bona fide*. These are matters outside the scope of this Tribunal's jurisdiction. What we do find, however, is that the Appellant often expressed his dissatisfaction with the CCU in a way that would likely have been seen by any reasonable recipient, as hostile, provocative and often personal...going beyond any reasonable pursuit of his grievances, and amounting to a determined and relentless campaign to obtain any information which he could then use to discredit them” (paragraph 53).

44. In view of the reasons set out in paragraphs 41 and 42, the Commissioner is satisfied that the Council has demonstrated how – in the wider context of its dealings with the complainant – having to consider RFI 960 and 967 could have the effect of harassing the authority or causing distress to Council staff.

Would complying with the request impose a significant burden in terms of expense and distraction?

45. The Commissioner's guidance states that when considering any burden imposed in complying with a request, consideration will need to be given not only to the cost of compliance, but also whether staff would be diverted or distracted from their usual work.
46. In the Council's refusal dated 30 May 2008, the Council referred to “an unacceptable burden on the authority” caused by the complainant's requests and behaviour. In reference to other correspondence received from the complainant, the Council stated that “the extent of the correspondence is so great that considering and responding to it is placing a substantial burden on the financial and human resources of the authority”.
47. The Commissioner notes that the Council has not provided an estimation of the time spent responding to the complainant's correspondence. However, the Council did state that the time required to respond to RFI 960 and 967 would exceed the appropriate limit. The Commissioner is satisfied that the volume and frequency of correspondence alone indicates that a significant amount of staff time would be required to read and determine any relevant response to each piece of correspondence, and that responding to RFI 960 and 967 would contribute significantly to the time already spent by the Council in addressing previous correspondence.
48. The Commissioner considers that the Council has not provided detailed representations relating to cost or time to demonstrate the significant burden in

terms of expense and distraction imposed by complying with RFI 960 and 967. Instead, the Council has implied these arguments through reiteration of the volume and frequency of correspondence. Nevertheless, in this particular case, the Commissioner is satisfied that the context of RFI 960 and 967 does indicate that complying with the requests would impose a significant burden in terms of expense and distraction.

Is the request designed to cause disruption and annoyance?

49. The Commissioner considers that this factor relates to the intention of the complainant, and, therefore, can be difficult to prove. As such, the Commissioner is of the view that a public authority will require a strong argument in order to demonstrate that a request is designed to cause disruption and annoyance.

50. The Council has not provided detailed representations in relation to this factor. However, the Council has stated that it considers the complainant is aware of the effect of his requests and highlighted the following piece of correspondence that he submitted:

“[A Council employee] seem[s] keen for me to address something to the Local Government Ombudsman; but I wouldn't initiate such action before first submitting a formal multi-page complaint to [the Council] – a document which would require several hours of effort in compilation...”

51. The Commissioner has also noted the following example from correspondence submitted to the Council by the complainant:

“As I have said before, if I send you too many papers, you can always ask me to turn the tap down – or even completed off. Depending upon your response hitherto, this may be my final offering”.

52. Whilst the examples stated in paragraphs 49 and 50 indicate that the complainant is aware of the effect of his correspondence, the Commissioner does not consider that the Council has adequately demonstrated that RFI 960 and 967 are designed to cause disruption or annoyance.

Does the request lack any serious purpose or value?

53. The Commissioner notes that the Council has not submitted any arguments in relation to this factor. However, the complainant has stated that he considers the Council officers deliberately refused to process the requests under investigation as a way of suppressing information which, if released, would cause them personal embarrassment.

54. The Commissioner considers that the Act is not generally concerned with the motives of the applicant, but with transparency for its own sake. The Commissioner also does not consider a lack of serious purpose or value to be enough on its own to make a request vexatious.

Conclusion

55. In this case, the Commissioner has concluded that RFI 960 and 967 form part of a pattern of behaviour which could fairly be seen as obsessive, when considered in the context referred to in paragraph 30. The Commissioner is satisfied that the Council has demonstrated how considering RFI 960 and 967 would have the effect of harassing an authority or causing distress to staff. The Commissioner is also satisfied that the Council has demonstrated that responding to RFI 960 and 967 would impose a significant burden in terms of expense and distraction.
56. The Commissioner has noted that the Council has not provided arguments in relation to whether the requests lack serious purpose or value. The Commissioner also considers that the Council has not demonstrated that the requests were designed to cause disruption or annoyance. However, in this case, the Commissioner is satisfied that the conclusions set out at paragraph 54 are strong enough to support the Council's application of section 14(1) of the Act in relation to RFI 960 and 967.

Regulation 12(4)(b) – manifestly unreasonable

57. Previously in this Notice the Commissioner set out his view that the requests referenced RFI 965, 966 and 980 fell to be considered under the EIR. The Council had initially applied section 14 to all the requests, but later amended this by applying regulation 12(4)(b) to the above three requests instead. The Commissioner has therefore considered whether the Council correctly applied regulation 12(4)(b) to those requests. This provides that a public authority can refuse to disclose information to the extent that the request is manifestly unreasonable.
58. While the EIR contains no definition of the term 'manifestly unreasonable', the Commissioner considers that the word "manifestly" means that a request should be obviously or clearly unreasonable – there should be no doubt as to whether a request is unreasonable.
59. In view of the Information Tribunal's findings in *Carpenter v Information Commissioner* (EA/2008/0046), the Commissioner is of the view that the factors to be considered when determining whether a request for information is vexatious may also be relevant when determining whether a request for information is manifestly unreasonable.
60. In this case, the Commissioner is satisfied that the arguments provided by the Council in relation to section 14(1) of the Act are also strong enough to engage regulation 12(4)(b) of the EIR in respect of RFI 965, 966 and 980. In reaching this decision, the Commissioner noted that the context and history of RFI 965, 966 and 980 is shared with RFI 960 and 967, and the considerable volume of correspondence which the Council has received from the complainant. The Commissioner also noted the significant burden in terms of expense and distraction imposed on the Council by continued correspondence and requests, and the accusations contained within the complainant's more recent correspondence.

61. For the reasons set out above, the Commissioner's view is that the exception provided by regulation 12(4)(b) is engaged and he therefore went on to consider the public interest in disclosure.

Public Interest Test

62. In addition to demonstrating that regulation 12(4)(b) is engaged, regulation 12(1)(b) states that, in order to justify a refusal of a request, a public authority must also be able to demonstrate that, in all circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
63. When considering the public interest test, public authorities should be mindful of the specific presumption in favour of disclosure provided by regulation 12(2) of the EIR. In effect, this means that if the factors on both sides of the test are balanced evenly, the public authority should disclose the information.

Public interest arguments in favour of disclosing the requested information

64. The Council has acknowledged that there is a public interest in transparency and accountability which is served by disclosure under the Act or the EIR.
65. The Commissioner's view is that the general purpose of the EIR is to enable public access to information which affects, or is likely to affect, the environment. This has the clear benefits of promoting accountability and transparency, as well as enabling individuals to access information which may help them to understand or to challenge a decision made, or action taken, by the public authority. This in turn promotes a sense of democracy and public participation.

Public interest arguments in favour of maintaining the exemption

66. The Council argued that the public interest in this case was limited to the inherent public interest in disclosure. The Council stated that it does not consider there to be sufficient public interest in the information requested in RFI 965, 966 and 980. As evidence, the Council stated that it has not received any other requests for this information. The Council also stated that it is not aware of any evidence of wider public interest in the subject matter of RFI 965, 966 and 980.
67. The Council also stated that it does not consider the continued diversion of resources required to address the volume of the complainant's correspondence to be in the public interest. The Council argued that the public interest in this case is best served by Council officers being able to deliver Council services to the wider community.

Balance of the public interest arguments

68. The Commissioner does not accept the argument that a subject is only of wider public interest if more than one individual submits a request for information on the subject. The Commissioner's view is that there have been examples of previous requests for information that served the wider public interest but that did not

generate a large number of requests from the public at large; for example, the request for Cabinet Minutes relating to the war in Iraq and requests for MP's expenses. The Commissioner does not seek to compare the public interest in the requests to which this Notice relates to those for the Cabinet minutes and he has used these examples only to highlight his position.

69. The Commissioner accepts that responding to RFI 965, 966 and 980 would require the Council to divert a disproportionate amount of its resources from its everyday core functions. The Commissioner is of the view that the Council has already demonstrated a significant diversion of resources to address the complainant's correspondence to date.
70. The Commissioner also considers there to be a very strong public interest in public authorities being able to carry out their wider obligations fully and effectively, so that the needs of the communities they serve are met. He considers that in this case, the public interest is not served by diverting resources from the Council's core duties to answering the complainant's requests. The Commissioner is mindful of the inherent public interest in disclosure of environmental information and that the Council possibly contributed to further requests and correspondence by dealing with them outside of the provisions of the legislation. However, his view is that the public interest in this case is best served by a Council that is able to fulfil its core duties and serve the community free from the significant burden and distraction that these requests are likely to cause.
71. In view of the above the Commissioner has concluded that the public interest in maintaining the exception under 12(4)(b) outweighs the public interest in disclosing the information.

Procedural Requirements

Section 17 of the Act – 'Refusal of request'

72. The Commissioner notes that the Council has a procedure for dealing with complaints about the handling of requests for information². However, the Commissioner noted that the Council's notice on 30 May 2008 did not contain particulars of this procedure. As such, the Commissioner finds that the Council breached section 17(7)(a) of the Act.

Regulation 11 of the EIR – 'Representation and reconsideration'

73. The Commissioner considers that the Council has breached regulation 11(3) of the EIR for failing to carry out an internal review under in respect of RFI 965, 966 and 980, the Council. There is no equivalent breach under the Act in respect of RFI 960 and 967.

Regulation 14 of the EIR – 'Refusal to disclose information'

² <http://www.wiltshire.gov.uk/council/foi/foicomplaintsprocedure.htm>

74. The Commissioner finds that the Council initially failed to consider RFI 965, 966 and 980 under the EIR. As such, the Commissioner finds that the Council breached regulation 14(1) of the EIR in its handling of these requests for not issuing a refusal notice stating that the information requested was exempt under regulation 12(4)(b).
75. The Commissioner finds that the Council breached regulation 14(2) for failing to issue a refusal no later than 20 working days after receipt of the requests.
76. The Commissioner finds that the Council breached regulation 14(3) for failing to state the exception relied on, and the matters considered in reaching its decision with respect to the public interest under regulation 12(1)(b).
77. The Commissioner finds that the Council breached regulation 14(5) for failing to issue a refusal which informed the applicant of his right to make representations under regulation 11 and the enforcement and appeal provisions under regulation 18.

The Decision

78. The Commissioner's decision is that the public authority was correct in its application of section 14(1) of the Act to RFI 960 and 967, and regulation 12(4)(b) of the EIR to RFI 965, 966 and 980.
79. However, the Commissioner has decided that the public authority breached the following section of the Act in considering RFI 960 and 967:
 - Section 17(7)(a).
80. The Commissioner has also decided that the public authority breached the following regulations of the EIR in considering RFI 965, 966 and 980:
 - Regulation 11(3);
 - Regulation 14(1);
 - Regulation 14(2);
 - Regulation 14(3);
 - Regulation 14(5).

Steps Required

81. The Commissioner requires no steps to be taken.

Other matters

82. During the investigation of this complaint, the Commissioner's staff viewed the Council's complaints procedure for information requests³. The information contained in this procedure suggests that the Council is operating a multiple stage internal review procedure. Both the Act and the EIR emphasise the need for public authorities to ensure that internal reviews are conducted promptly. The Commissioner has further commented that an internal review of a response to a request for information should not consist of more than one stage. In light of this, the Commissioner recommends that the Council view the relevant guidance on this matter⁴, and amend its current procedures to reflect the expected practice in this regard.

³ <http://www.wiltshire.gov.uk/council/foi/foicomplaintsprocedure.htm>

⁴ http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/foi_good_practice_guidance_5.pdf

Right of Appeal

83. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the First-Tier Tribunal (Information Rights) website.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 22nd day of February 2010

Signed

**Anne Jones
Assistant Commissioner**

**Information Commissioner's Office
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Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Freedom of Information Act 2000

Section 8 - Request for Information

Section 8(1) provides that –

“In this Act any reference to a “request for information” is a reference to such a request which –

- (a) is in writing,
- (b) states the name of the applicant and an address for correspondence,
and
- (c) describes the information requested.”

Section 8(2) provides that –

“For the purposes of subsection (1)(a), a request is to be treated as made in writing where the text of the request –

- (a) is transmitted by electronic means,
- (b) is received in legible form, and
- (c) is capable of being used for subsequent reference.”

Section 14(1) – Vexatious requests

Section 14(1) provides that –

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

Section 17 – Refusal of request

Section 17(7) provides that –

“A notice under section (1), (3) or (5) must –

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50.”

Environmental Information Regulations 2004

Regulation 2 - Interpretation

Regulation 2(1) In these Regulations –

“the Act” means the Freedom of Information Act 2000(c);

“applicant”, in relation to a request for environmental information, means the person who made the request;

“appropriate record authority”, in relation to a transferred public record, has the same meaning as in section 15(5) of the Act;

“the Commissioner” means the Information Commissioner;

“the Directive” means Council Directive 2003/4/EC(d) on public access to environmental information and repealing Council Directive 90/313/EEC;

“environmental information” has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form 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) and (b) 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 elements of the environment referred to in (b) and (c);

“historical record” has the same meaning as in section 62(1) of the Act;

“public authority” has the meaning given in paragraph (2);

“public record” has the same meaning as in section 84 of the Act;

“responsible authority”, in relation to a transferred public record, has the same meaning as in section 15(5) of the Act;

“Scottish public authority” means –

- (a) a body referred to in section 80(2) of the Act; and
- (b) insofar as not such a body, a Scottish public authority as defined in section 3 of the Freedom of Information (Scotland) Act 2002(a);

“transferred public record” has the same meaning as in section 15(4) of the Act; and
“working day” has the same meaning as in section 10(6) of the Act.

Regulation 11 - Representation and reconsideration

Regulation 11(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.

Regulation 11(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.

Regulation 11(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.

Regulation 11(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 receipt of the representations.

Regulation 11(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.

Regulation 12 - Exceptions to the duty to disclose environmental information

Regulation 12(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.

Regulation 12(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;

Regulation 14 - Refusal to disclose information

Regulation 14(1) If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.

Regulation 14(2) The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.

Regulation 14(3) The refusal shall specify the reasons not to disclose the information requested, including –

- (a) any exception relied on under regulations 12(4), 12(5) or 13; and
- (b) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3).

Regulation 14(4) If the exception in regulation 12(4)(d) is specified in the refusal, the authority shall also specify, if known to the public authority, the name of any other public authority preparing the information and the estimated time in which the information will be finished or completed.

Regulation 14(5) The refusal shall inform the applicant –

- (a) that he may make representations to the public authority under regulation 11; and
- (b) of the enforcement and appeal provisions of the Act applied by regulation 18.

Annex A

RFI 960 - request on 18 May 2008

In this request, the Commissioner considers that “this matter” refers to a letter which had been sent to a third party in which the third party had been threatened with legal action if they did not remove an obstruction to a right of way. The complainant has stated that he considers the Council sent the letter in question. The Council denies having sent the letter. Further to representations received from both parties, the Commissioner is satisfied that the letter in question is also the subject of RFI 967.

- 'Under the formal procedures for Freedom of information, please arrange for me to be supplied with copies of all kinds of documents in all WCC files relating to “this matter” and the aspired “outcome” – including informal notes, notes of telephone conversations and meetings, records of decision-making, projected courses of action, memoranda, letters, emails, computer extractions, and all other types of material’ – 18 May 2008.

RFI 965 - request on 4 May 2008

- '[sic] Under the Freedom of Information provisions, please could you arrange for satisfaction of the following requests:
 1. supply of the currently operative instruction/guidance documents(s) which advise rights of way officers on procedures for recording, processing and eliminating reported obstructions when they are reported to the Trowbridge HQ;
 2. supply of documents which instruct local wardens on the procedures for the local processing of obstructions when brought to their attention, and for finding unreported obstructions by their own periodic inspections;
 3. supply of guidance given to parish councils in how to report obstructions to the county authority;
 4. for any period of 12 months or longer within the five years 2002 to 2006 inclusive, but excluding periods of authorised closure for farming protections, the supply of a statistical analysis for the processing of obstruction reports throughout the county, distinguishing the following factors:
 - the total number of obstructions reported/discovered;
 - the numbers of obstructions eliminated in less than 3 months, 3-6 months, 6-12 months, and not eliminated within 12 months;
 - the sources of discovery – warden, parish council, other;
 - the action taken to seek removal – direct action by warden, informal contact of landholder, request letter to landholder, formal notice of prospective court action, legal proceedings;
 - an analysis of the reasons for failing to obtain removal within 12 months – including failure to identify the landholder, discretionary decision for non-pursuance, and non-compliance of landholder necessitating a longer period of pursuance;

- an analysis of the nuisance caused by failure to obtain removal within 12 months, ranging from minor deviation required (under 20 metres) to total inability to negotiate the right of way;
- an analysis of the nature of obstructions – including farming activities (ploughing and crops), fences and locked gates, unrepaired stiles, overhangings, fallen trees, deposits, constructions, wilful deterrence or intimidation’ – 4 May 2008.

RFI 966 - request on 7 May 2008

- ‘Under the Freedom of Information provisions, in liaison with the Corporate Information Officer in the Directorate of Resources, please could you arrange for satisfaction of the following requests:
 1. supply of all filed documents in your Trowbridge office, and in the office of the local warden, during the years 1981-2000 inclusive, concerning the obstruction of Amesbury 29 bridleway – including representations received, internal deliberations, decisions made, action taken, and all kinds of communications to/from complainants, landholders, and any other interested parties.
 2. supply of all filed documents relating to the delegated decision taken by officers in 2007 to process the section 119 application for diversion of Amesbury 29 bridleway – including communications with the applicants and with Salisbury District Council, and including internal deliberations as to whether, on the balance of probabilities, the application was compatible with the requirements of subsection 119(6) and the Council’s primary obligation to protect the rights of way network.
 3. supply of all filed documents relating to consideration of the specific issues as to whether, on the balance of probabilities, the projected justification for the diversion (i.e. the proposed Solstice park developments) would actually come to fruition; and whether, if the requested section 119 order were made, it would actually result in fulfilment of the specifications and aspirations as declared within the section 119 application.
 4. supply of all filed documents relating to the consideration of all objections to the proposed diversion as submitted to the Council subsequent to the making of the diversion order on 6 March 2008’ – 7 May 2008.

RFI 967 - request on 12 May 2008

Further to information received from both parties, the Commissioner is satisfied that in this request, “this letter” can be considered to be the same letter as referred to in RFI 960.

- ‘Under the Freedom of Information provisions, please could you arrange for me to receive copies of all internal documents that refer to this letter, filed in your own office, and in the offices of [a third party] and [a third party], and in any other offices where this matter may have been

considered – including informal notes, opinions, decisions, and memoranda.

I would also welcome a statement which summarises the various stages of the consideration and processing of this matter within County Hall between 1 April (your telephone conversation with [a third party]) and 8 May – specifying the names of officers involved and the dates of associated actions’ – 12 May 2008.

RFI 968 - request on 26 May 2008

- ‘Under the FOI provisions, please could you arrange for me to be supplied with copies of all documents in all files within the Chief Executive’s office which include any personal reference to me [complainant’s name] whatsoever, either specifically or by implication, regardless of their subject matter – including all letters (other than those which I have personally written or received as the addressee), memoranda, notes of meetings and telephone conversations, considerations and decision-making, emails and other electronic extracts, and all other kinds of document, dated in the year 2007 or 2008’ – 26 May 2008.

RFI 980 - request on 24 May 2008

- ‘Please can you advise me of the Council’s current perspective. Is it:
 - a) There has been no encroachment on Council land; or
 - b) There has been some encroachment but the Council cannot determine the extent of it and has no intention of attempting to assess it; or
 - c) The Council doesn’t know whether or not there has been any encroachment and has no intention of attempting to find out?

Under the FOI provisions, please arrange for me to be supplied with copies of all filed documents which relate to the boundary survey in 2007 – including the reasons for the survey, the conduct of the survey, the results of the survey, and the decision-making in consequence of the results’ – 24 May 2008