

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

Date: 28 November 2011

Public Authority: Basildon District Council
Address: The Basildon Centre
St Martin's Square
Basildon
Essex
SS14 1DL

Decision (including any steps ordered)

1. The complainant requested information relating to long-running disputes that he has with the council over planning issues and properties that he owns. The council argued that it did not have to comply with the requests because the requests were vexatious and repeated under the Freedom of Information Act 2000 ("the FOIA") or manifestly unreasonable under the Environmental Information Regulations 2004 ("the EIR").
2. The Commissioner's decision is that the council correctly determined that the requests were vexatious under the FOIA or manifestly unreasonable under the EIR. There are no steps to be taken.

Request and response

3. On 10 January 2011, the complainant requested information from the council in the following terms:

"1) Basildon Council have in the past written to the Planning Inspectorate telling them that my property known as [address of property] is not a dwelling house for the purposes of the Planning Act. I am requesting to be told whether you hold any recorded information showing what type of building [property name] is classed as for the purposes of the Planning Act.

2) Basildon Council have previously written telling me that to change or

alter the external appearance of [property name] would be development which is not permitted development and would therefore require planning consent. I am requesting to be told whether you have any recorded information showing where legislation is to be found which this information is based upon.

3) Acting as my authorised agent Chartered Surveyor [name] made a Data Protection Act and Freedom of Information Act request to Basildon Council on 19th May 2006. The council returned the Data Protection Act fee cheque and refused to provide my personal data as required by the Data Protection Act, while also refusing to provide what should be publicly available information requested by [name] on my behalf and which can be seen to have previously been withheld from myself and the Planning Inspectorate. I am requesting to be told whether you have any recorded information showing the name of the council officer that authorised the refusal to provide [name] with planning records that he requested and which I am given to understand should be freely available to the public to view.

4) Basildon Council refused [name]'s Freedom of Information Act request which had asked to be provided with a, 'Copy of the planning departments recommendations to the chair of the planning committee at around about June 1999 concerning planning application [planning reference numbers]. I am now requesting access to this document which evidence shows I have been consistently refused access to, but which I understand should be freely available for the public to view.

5) The council can be seen and proven to have repeatedly ignored and refused numerous Data Protection Act requests that I made between 2002 – 2009 until the Data Commission became involved and then made an assessment that Basildon Council had not complied with Data Protection law. One of the documents that [name] has specifically requested, but which was withheld for years was a letter written to the Chief Executive on my behalf by councillor [name] who was calling for an internal audit. I am requesting to be told whether you hold any recorded information showing who authorised councillor [name]'s letter and other requested data to be withheld, and whether you have any recorded information showing why it was withheld in breach of Data Protection Act law.

6) Do you hold any recorded information showing that either an internal audit was held as called for by Councillor [name], or if not do you hold any recorded information showing why an Internal Audit was not carried out, and who was responsible for any decision over this matter.

7) On the 31st March 2006 [name] submitted a Formal Complaint to the council acting on my behalf as my authorised advocate in

accordance with advice contained within the council's own complaints leaflet. I am requesting to be told whether you hold any recorded information showing who authorised [name] to refuse to process this complaint in accordance with the council's own published complaints procedures, or why [name] refused to process the complaint.

8) A document that can be seen to have been withheld for seven years with past Data Protection Act requests, but which has recently been provided by Basildon Council under the Data Protection Act since the Information Commissioner became involved, shows a council officer to be telling your Internal Audit Dept. in 2002 that in or about 1999 there had been a, 'change in planning legislation whereby individuals were not required to seek planning permission to demolish a building'. I am requesting recorded information which as a planning authority Basildon Council obviously must hold showing the date when this change in legislation came into force, where the legislation is to be found, and details of whether legislation concerning any planning application fees required for such permission are to be found.

9) I am requesting to be told whether you hold any recorded information showing planning permission to have either been granted, or refused to:

[names of three properties]

10) The council have written telling me, 'This council does not recognise [property name] as a dwelling house'. I am requesting to be told whether you hold any recorded information showing why [property name] is not recognised as a dwelling house by the council, and whether you have any recorded information showing where the legislation is to be found which entitles Basildon Council to not recognise [property name] as a dwelling house but whilst demanding and obtaining council tax when the property was unoccupied".

4. The council responded on 4 April 2011.
5. The complainant wrote to the council on 14 April 2011 to ask it to review its response as he was not satisfied with the responses provided.
6. The council completed its review on 9 June 2011. It said that it did not have anything further to add. A further review was however sent to the complainant on 29 July 2011. This said that the council considered that section 14(1) and 14(2) applied because the requests were vexatious and repeated. It added that it had already released all the personal data it holds to the complainant as a result of previous requests for information.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He asked the Commissioner to consider whether the council had correctly determined that his requests were vexatious or repeated under the FOIA.
8. During the Commissioner's investigation, the council accepted that some of the requests should actually have been considered under the EIR rather than the FOIA. It said that where that was the case, it wished to rely on regulation 12(4)(b) which relates to manifestly unreasonable requests under the EIR and considered that the public interest favoured maintaining the exception. The Commissioner agrees that some of the requests fall to be considered under the EIR rather than the FOIA.
9. For clarity, the council mentioned personal data in its response to the complainant. Such information would fall outside the scope of the FOIA or the EIR and therefore this investigation. When asked to identify what, if any, information it held falling within the scope of the requests that the council considered was personal data, the council referred to point 3 and 6 of the request. The Commissioner considered the nature of the requests and does not agree that any recorded information held would constitute the complainant's own personal data. In any event, the Commissioner notes the council's assertion that it has already made available any information it holds that would constitute the complainant's personal data.

Reasons for decision

Vexatious or manifestly unreasonable requests

10. Section 14(1) of the FOIA states the following:

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

11. Regulation 12(4)(b) of the EIR states:

"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"

12. The Commissioner's view is that it is permissible to refuse vexatious requests under regulation 12(4)(b) as manifestly unreasonable.

13. Guidance on the Commissioner's approach to vexatious requests can be found on the Commissioner's website and for ease of reference, at the following links:

http://www.ico.gov.uk/for_organisations/freedom_of_information/information_request/reasons_to_refuse.aspx

<http://www.ico.gov.uk/foikb/FOIPolicySectionsRegs.htm>

14. As explained in the guidance, the Commissioner's general approach is to consider the argument and evidence that the public authority is able to provide in response to the following questions:

- Could the request fairly be seen as obsessive?
- Is the request harassing the authority or causing distress to staff?
- Would complying with the request impose a significant burden in terms of expense and distraction?
Is the request designed to cause disruption or annoyance?
- Does the request lack any serious purpose or value?

15. It will not be necessary for all of the above criteria to apply but in general, the more that apply, the stronger the case for a vexatious or manifestly unreasonable request will be. The Commissioner is able to take into account the history and context of the request when determining whether a request is vexatious or manifestly unreasonable. It will often be the case that a request for information only reveals its vexatious quality when put into context.

16. The Commissioner would like to begin his analysis by acknowledging that in this case, the council responded to the request initially. However, it subsequently decided that the request was actually vexatious or manifestly unreasonable. The Commissioner would like to point out that when a request is vexatious or manifestly unreasonable there is nothing in the legislation that prevents a public authority from deciding to respond anyway. However, it can apply the exclusions following its response if it decides with hindsight that it should have relied on the exclusions at the time of its initial response. A refusal should not be based on events that happened following the request, such as a complaint about the response provided. The Commissioner clarified with the council that it was content that the request was vexatious or manifestly unreasonable at the time of its initial response.

Could the request fairly be seen as obsessive?

17. When a request for information is refused as vexatious or manifestly unreasonable, it is often the case that an examination of the background will reveal a long and difficult relationship between the parties that has arisen as a result of a dispute or a number of related

disputes that, for whatever reason, have never been resolved to the satisfaction of the complainant. This is clearly the case here.

18. The council explained to the Commissioner that the history of this particular dispute goes back some way and is particularly complicated and involved. It explained that the complainant owns three properties, one of which he lives in and the other two are rented out. The background grievance, which forms the context of the requests in issue, largely relates to these three properties. The earliest complaint raised by the complainant dates back to events that he alleges happened in the 1970s and the complainant has alleged in correspondence that he believes that the council has been continually harassing him for thirty years in relation to the properties that he owns.
19. Over a number of years, the complainant has alleged that there were "serious irregularities" in the planning department. A letter from the Local Government Ombudsman dated 10 December 2001 gives an idea of the wide scope and volume of complaints that the complainant was raising at this time, although the issues listed below are by no means the extent of the matters that the complainant complained about. Issues brought to the attention of the Ombudsman include:
 - (i) The council's position on the development rights relating to one of his properties was incorrect and that it had therefore misled prospective purchasers of his property
 - (ii) He had been overcharged in planning fees
 - (iii) A false application was registered in his name and officers withheld this fact and misled the court deliberately in this and other ways.
 - (iv) The council had failed to register planning applications he had made
 - (v) The council had not dealt with his complaints in accordance with its published procedure
 - (vi) Council officers forced entry into the complainant's property and took photographs without being authorised to do so in 1978
 - (vii) Council officers recently entered [property name] without authority resulting in damage to the property.
 - (viii) False photographs and other information were submitted with his planning application appeal to the Planning Inspectorate which had played a part in the appeal being dismissed
 - (ix) The council's monitoring officer failed to put cases of maladministration before the full council
20. The Commissioner has been provided with a bundle of documents by the council which indicate that the council made many attempts to try to resolve the issues brought to its attention by the complainant over a long period of time, and its efforts to resolve matters involved inviting

the complainant to attend meetings with senior council officers. The issues were also considered by the council's Chief Executive who wrote to the complainant on 10 May 2002 expressing concern over the costs involving in continuing to engage in dialogue about issues that could not be resolved to the complainant's satisfaction. The evidence indicates that the complainant was unable to accept any of the outcomes that were communicated to him if the response did not accord with his own views and that he would continue to pursue his complaints until he got the outcome that he wanted. It is clear that the council's numerous letters indicating that it could not usefully add anything further had little or no effect on the complainant's campaign. The council supplied a letter dated 14 February 2003 that had been written to the complainant in which the following comments had been made by the council's Executive Director:

"...I must reiterate to you that the council does not consider that there is any substance to your allegations, nor do the Courts or the Ombudsman support any of the issues that you have referred to them. We firmly believe that the Council has fully answered your allegations over a considerable period of time, albeit that you do not agree with our responses.

As your meeting on 17th January 2003...[name] reminded you that at a meeting...in July 1998, you commented that you would never go away. Furthermore, at the meeting on 17th January, you stated that [name] knows what a 'pain' you can be and you reiterated that you would continue with this stance until you got what you wanted. This clearly indicated that you will continue to pursue these issues, regardless of the council's explanations....It is not in the wider public interest for the Council to allocate resources to answer repeated and unreasonable requests for information. This is particularly the case where the time and effort spent is totally wasted because you do not agree with any response as a matter of course. I now wish to make it very clear to you that this cannot continue".

21. The evidence demonstrates that one complaint would often lead to a number of other tangential complaints and the complaints made were involved and voluminous. The council has estimated that during the worst period, the complainant was writing in about 8 to 10 times a month to various different council departments. According to the council, this rate has recently slowed during the last two years to about 3 to 4 times a month however there is not often a month that goes by when the council does not receive at least two letters from the complainant basically going over the same subject matter again.
22. The complainant also submitted a number of requests for information that were clearly connected to his planning disputes. There was evidence that the requests for information represented attempts to try

to continue with or reopen complaints that had been dealt with. In a letter written dated 23 October 2006, the complainant said the following:

"[council officer name] together with others can now be seen to have since [sic] been responsible for withholding information and documents requested under both the Data Protection Act and Freedom of Information Act, which I believe if provided would clearly expose the fact that there has been a conspiracy to cover up what has previously taken place".

23. Over the years, despite a number of unsuccessful attempts to have his complaints upheld by other independent bodies including the court, the Planning Inspectorate, Essex Police, the Local Government Ombudsman and the Audit Commission, the complainant has continued to try to engage the council in dialogue over a wide variety of complaints concerning planning issues and his properties and questioned any outcome communicated to him.
24. Taking all of the above into account, the Commissioner decided that there was sufficient evidence to conclude that the complainant's requests were obsessive and represented an attempt to reopen complaints relating to planning issues and his properties when he had already had the opportunity to have those matters considered by the council and other bodies over many years. It is not the Commissioner's role to determine whether there was any merit in any of the complainant's historical complaints to other organisations however the complainant consistently demonstrated an unwillingness to accept any judgement that differed from his own. In cases where an independent body found in the council's favour, it was common for the complainant to allege that it must have been misled by the council in some way. It was clear to the Commissioner that it was very unlikely that the council would ever be able to satisfy the complainant and in the Commissioner's view, the evidence and argument strongly supported the council's case that the requests were obsessive.

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

25. The Commissioner would like to highlight that when considering this part of the criteria, the Commissioner is not concerned with what the complainant's intention may have been. It is not unusual for a request to be deemed vexatious or manifestly unreasonable even though the complainant genuinely believes that the request and contextual behaviour was entirely justified. Instead, the Commissioner is concerned with the *effect* that the request would have had on any reasonable public authority.

26. There will often be a significant overlap between the reasons why a request can fairly be seen as obsessive and the reasons why it may have had the effect of harassing the authority. The council told the Commissioner that the complainant's constant, detailed and voluminous correspondence often raising the same issues over and over again, had had the effect of harassing its officers for years.
27. It said that several planning staff members have felt verbally threatened when dealing with the complainant and one staff member had felt intimidated by the complainant's manner and general tone during meetings. The council pointed out that the complainant sometimes singles out individual staff members as the subject of his complaints and impugns their professional integrity. The Commissioner notes that the complainant's correspondence often alleges fraud, conspiracy and maladministration. The council said that the complainant has a tendency to misrepresent events that have happened. For example, it referred to an occasion when a member of staff approached the complainant in its reception area to talk to him and he wrote in to say that he had "been accosted" by the staff member. The council said that he has also made claims that staff have made abusive calls to him which the council says was not the case.
28. The Commissioner notes that the complainant's tone is often accusatory and hostile. The Commissioner also notes that the complainant often demanded an immediate response to very detailed and serious allegations and threatened legal action on a number of occasions. In determining whether the request had the effect of harassing the public authority, the Commissioner was particularly influenced by the sheer volume of contact over a long period of time, the repetitive nature of the correspondence and the indications that the complainant would persist until he got an outcome that suited him. The Commissioner considered that it would not be unreasonable for a staff member to regard correspondence as harassing when there was every indication that it would only lead to further complaints and requests without generating a productive outcome. The Commissioner is prepared to accept that dealing with the complainant's request in this case, when seen in its appropriate context, may well have been seen as harassing by the council's staff members for these reasons.

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

29. The council said that given the nature and volume of the correspondence and the way in which the complainant had approached the authority, it was likely that it had cost thousands to deal with the complainant's issues. The council said that an investigation conducted by the council's auditors in 2003 alone cost £6000. This investigation

had been instigated by the complainant following allegations connected to planning issues.

30. The Commissioner considered that compliance with the request in isolation may not have been too burdensome, however, when taken in context, the Commissioner was satisfied that the requests formed part of a collective burden that the authority had borne over a number of years and that the expense and distraction from its other important duties had been substantial. As already noted the evidence indicates that any response provided would be unlikely to satisfy the complainant and only result in further complaints. The Commissioner took this into account when deciding that compliance with the request would impose a significant burden on the authority.

Is the request designed to cause disruption or annoyance?

31. The council said that it was of the opinion that the requests were designed to cause disruption or annoyance as the complainant was clearly conducting a campaign to wear the council down into giving him what he wants. Although the Commissioner understands why the council has formed this view, this part of the criteria is difficult to engage because it requires objective evidence of intention and motivation. The Commissioner was not persuaded that the authority provided sufficiently strong evidence to prove this was the intention or motivation behind the requests however he considered that the other elements of the criteria had been met to the required standard in any case and that the authority had been able to demonstrate that the requests were vexatious or manifestly unreasonable.

Regulation 12(4)(b) - Public interest

32. This part of the Commissioner's analysis only relates to the requests to extent that they are covered by regulation 12(4)(b) of the EIR. Unlike section 14(1), this regulation has a public interest test associated with it. This means that even if the request was manifestly unreasonable, information can only be withheld if the public interest in maintaining the exception outweighs the public interest in disclosing the information.
33. There are important reasons why this exception exists under the EIR. Both the FOIA and the EIR give the public unprecedented rights to access recorded information held by public authorities. In exercising those rights, members of the public must be responsible. It was not the intention of the legislation that compliance with requests would impede disproportionately and unfairly on the many other important duties that public authorities have to carry out, often with limited resources in place. Similarly, it is not the intention of the legislation to

allow members of the public to pursue grievances against public authorities to an unreasonable extent.

34. The Commissioner considered that it was clear that on this occasion, the complainant had not exercised his rights responsibly and this had resulted in an unacceptable burden being imposed on the public authority's limited resources. The Commissioner considered that the complainant's requests are, in the main, an attempt to pursue his own personal complaints against the authority because he can not accept the responses provided to him, and in view of that, the Commissioner did not consider that there was any public interest in compliance with these requests that would outweigh the particularly strong public interest in upholding the exception in order to protect the public authority's resources.

Repeated requests

35. For clarity, the Commissioner did not find it necessary to consider whether any of the requests were repeated because he was satisfied that they were vexatious or manifestly unreasonable.

Right of appeal

36. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

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.

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

Andrew White
Group Manager, Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF