

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

Decision notice

Date: 27 February 2012

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

Decision (including any steps ordered)

1. The complainant requested photographs, records and notes relating to a survey carried out in 1978 by officials from Basildon Council (the council). He also requested other information relating to several named properties ranging over a number of years. 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.
3. However, the council breached regulation 14(2) by failing to provide a refusal notice citing the exception at regulation 12(4)(b) within the statutory time for compliance.

Request and response

4. On 27 April 2011, the complainant wrote to the council and requested the following information:

" Freedom of Information Act request

Evidence that I have shows that on the 11th. and 30th. May 1978 council officers [named officers] carried out a survey of the plotlands in [named area], and [named area]. Under the Freedom of Information Act I am requesting the council to confirm or deny whether you hold any recorded information in the form of:

1 (a) the map that [named officer] drew and produced showing what properties existed in these plotlands in 1978, or

(b) any photographs taken during this survey in 1978, or

(c) any other notes or records made during the survey in 1978, or

(d) any other notes and records relating to the 1978 survey that have been produced since the survey was carried out.

2. Enclosed is a copy of a letter that Basildon Council sent me dated 17th. September 1979. I am requesting access to the records that the council are shown to hold which indicate [named dwelling] to constitute a dwelling for the purposes of planning legislation.

3. (a) Enclosed is a copy of two photographs that Basildon Council submitted to the Planning Inspectorate telling them in a Statement dated 13th. December 1999 that these photographs were of [named dwelling] taken in 1978. I am requesting the council to confirm or deny whether you hold any records from where the examination of [named dwelling] referred to in the enclosed letter dated 17th. September 1979 was carried out, and if so whether there are any records showing what was seen during this examination that indicated [named dwelling] constituted a dwelling for the purposes of planning legislation, or

(b) whether the council hold any photographs taken when the "brief examination" of [named dwelling] referred to in the enclosed letter date 17th. September 1979 was carried out.

4. Do the council hold any records showing when and why the Enforcement Notice referred to in the enclosed letter dated 17th. September 1979 was withdrawn.

5. The property known as [named dwelling], was shown as having no notation when the 1978 survey was carried out while it was shown as having been served with an Enforcement Notice. I am requesting the council to confirm or deny whether you hold any recorded information showing:

(a) why an Enforcement Notice was served, and whether it was enforced or withdrawn etc. and,

- (b) *whether [named dwelling] has since been accepted by the council as meeting the criteria set out in the council's policy BAS/GB5 and if so the date this was accepted, and*
- (c) *if [named dwelling] has been accepted as meeting the requirements of BAS/GB5 do you hold records showing how it has gone from having no notation in 1978 to now being accepted as a dwelling which either had the benefit of planning permission or that existed prior to 1st. July 1948.*
6. [named dwelling], (formerly known as [named dwelling]) [named location] was recorded during the 1978 survey as having no notation. I am requesting the council to confirm or deny whether you hold any records showing:
- (a) *how [named dwelling] went from having no notation in 1978 to being said in a statement submitted to the Planning Inspectorate by the council dated 7th. January 2000, "The dwelling meets the criteria for a habitable dwelling house set out in Policy BAS/GB5 in the local plan," and*
- (b) *whether [named dwelling] had been given planning permission to either be built, or for a change of use to that of a dwelling prior to planning permission being granted for a replacement dwelling in 1997, or*
- (c) *whether the council hold any records showing [named dwelling] to have been a dwelling that existed prior to 1st. July 1948."*
5. The council provided a response to the complainant on 13 June 2011 in which it refused to disclose the information he requested on the basis of the exemption contained in section 12 (cost of compliance exceeds appropriate limit) of the FOIA.
6. The complainant requested an internal review of the council's decision on 24 June 2011.
7. Following an internal review, the council wrote to the complainant on 8 July 2011 upholding the application of section 12.

Scope of the case

8. The complainant contacted the Commissioner on 15 June 2011 to complain about the way his request for information had been handled. He referred to issues involving his other complaints but asked the

Commissioner to consider whether the council had complied with the FOIA.

9. On 31 October 2011, the Commissioner wrote to the complainant, stating that he intended to look at the applicability of section 12 to the requested information.
10. The Commissioner wrote to the complainant on 9 December 2011, outlining the council's arguments that the provision of the requested information would exceed the fees' limit.
11. The complainant argued that much of the information he requested was part of the planning register that the council had a statutory duty to make available.
12. 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.
13. On 25 January 2012, the council wrote to the Commissioner to explain that it was applying regulation 12(4)(b). The council offered to provide a file of information to support its view but the Commissioner declined, having received the same supporting evidence on which he had based his decision notice FS50381386 a short time previously.
14. The complainant was subsequently informed on 6 February 2012 that the council was applying regulation 12(4)(b) to the requested information.

Reasons for decision

Vexatious or manifestly unreasonable requests

15. 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".

16. 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"

17. The Commissioner's view is that it is permissible to refuse vexatious requests under regulation 12(4)(b) as manifestly unreasonable.
18. Guidance on the Commissioner's approach to vexatious requests can be found on the Commissioner's website at the links provided below.¹
19. 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?
20. It is not necessary for all of the above criteria to apply but in general, the more that apply, the stronger the case that a request is vexatious or manifestly unreasonable. 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 placed in context.
21. The Commissioner would like to acknowledge that the council, having applied section 12, subsequently decided that the request came under regulation 12(4)(b) of the EIR and was "manifestly unreasonable". Although this was a late application, the Commissioner considers that it was necessary to consider it under the EIR legislation, given the nature of the request.

1

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_applications/vexatious_requests_a_short_guide.pdf

<http://www.ico.gov.uk/foikb/FOIPolicyRegulation124b.htm>

22. The Commissioner is relying on the arguments set out in paragraphs 17-35 of his decision notice FS50381386.² Therefore, the Commissioner accepts the council's position that the request is vexatious and manifestly unreasonable.

Regulation 14(2)

23. Regulation 14(2) provides that where a public authority applies an exception under regulation 12, it should make this refusal as soon as possible and within 20 working days of receiving the request.
24. The complainant's request was made on 27 April 2011 and the council originally responded under the FOIA on 13 June 2011 which was beyond the statutory time for compliance. The council later informed the complainant that it was relying on regulation 12(4)(b) on 6 February 2012. The Commissioner consequently finds that the council has breached regulation 14(2).

² http://www.ico.gov.uk/~media/documents/decisionnotices/2011/fs_50381386.ashx

Right of appeal

25. 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

26. 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.
27. 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
Information Commissioner's Office
Wycliffe House
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SK9 5AF