

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

Date: 23 June 2015

Public Authority: East Riding of Yorkshire Council
Address: County Hall
Cross Street
Beverley
HU17 9BA

Decision (including any steps ordered)

1. The complainant has submitted three related requests for information to East Riding of Yorkshire Council ('the Council') about a planning matter. The Council refuses to comply on the basis that the requests are manifestly unreasonable under regulation 12(4)(b) of the EIR.
2. The Commissioner's decision is that the Council has responded correctly. The requests are manifestly unreasonable and the public interest does not favour disclosure.

Request and response

3. In February 2015, the complainant wrote to the Council and requested information in the following terms:

Request A – 9 February

"Planning application 317473 stated that the site was residential. Could you give me the planning numbers that the whole of this site obtained a residential use."

Request B – 10 February

"The council have stated that mistakes have been made can you confirm all the breaches of planning that have taken place on this site and when the council used the four or ten year rule."

Request C – 27 February

"Could you confirm which private dwelling was being developed. You are required to supply the information requested within twenty one working days."

4. The Council responded on 17 February, 23 February and 2 March. It said that it considered the requests to be manifestly unreasonable because they are vexatious and, in line with the provision under regulation 12(4)(b) of the EIR, it was not obliged to comply with them. It maintained this position in its internal review of the first two requests, which it provided to the complainant on 24 February.

Scope of the case

5. The complainant contacted the Commissioner on 25 February to complain about the way his requests for information have been handled.
6. The Commissioner has investigated whether the Council has correctly applied the provision under regulation 12(4)(b) to these requests.

Reasons for decision

Is the requested information environmental information?

7. Information is 'environmental information' and must be considered for disclosure under the terms of the EIR rather than the FOIA if it meets the definition set out in regulation 2(1)(a) to 2(1)(f) of the EIR.
8. The Commissioner considers the information in this case can be classed as environmental information, as defined in regulation 2(1)(c) of the EIR. This says that any information on measures such as policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect the elements or factors of the environment listed in regulation 2 will be environmental information. One of the elements listed is land.
9. The requests are for information relating a planning application. The Commissioner is therefore satisfied that, as these requests are for information concerning the use of land, it falls under the EIR.

10. Regulation 12(2) of the EIR says that a public authority shall apply a presumption in favour of disclosing environmental information.

Regulation 12(4)(b) – ‘manifestly unreasonable’ request

11. Regulation 12(4)(b) says that a public authority may refuse to disclose environmental information if the request is ‘manifestly unreasonable’. There is no definition of manifestly unreasonable under the EIR, but the Commissioner’s opinion is that ‘manifestly’ implies that a request should be obviously or clearly unreasonable.
12. Where the exception is engaged it is subject to a public interest test under regulation 12(1)(b) to determine whether the information should be disclosed in spite of the exception applying.
13. This exception applies where a request is either vexatious, or would be imposing a cost or burden on the authority to such an extent that it would neither be reasonable, nor in the public interest for it to comply with the request. The Council considers that the complainant's requests are vexatious.
14. In line with his published guidance on vexatious requests, the Commissioner has considered whether the request itself is manifestly unreasonable rather than the individual submitting it. Sometimes, it will be patently obvious that a request is manifestly unreasonable. In cases where it is not so clear cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. This will usually be a matter of objectively judging the evidence of the impact on the authority and weighing this against any evidence about the purpose and value of the request. Public authorities may also take into account the context and history of the request where relevant.
15. When a request is refused as vexatious or manifestly unreasonable, there is often a long and difficult background to the requests, usually arising from some sense of grievance that, for whatever reason, has not been resolved to the satisfaction of the complainant. This was observed in an earlier decision - FER0481077, discussed below - and is again the case here with the context and history of the situation appearing to be particularly important. However, the Commissioner does not consider it necessary to reiterate the background or findings of his previous investigation here in detail. This notice should be read in conjunction with the Commissioner’s previous decisions and the Tribunal appeal decision, all discussed at paragraph 18 – 19.
16. The Council again has told the Commissioner that the complainant has approached the Council and its predecessor, Beverley Borough Council,

regularly since the 1990s for information about a particular property. The complainant considers that there is no planning permission for this property. He claims that part of the site occupied by this property should be within the curtilage of his own property and that when the physical fabric of this property was extended after a planning application granted in 1990, the property extended on to his own land.

17. Officers at Beverley Borough Council investigated the complainant's concern prior to 1996 and officers from East Riding of Yorkshire Council investigated the matter after 1996. A further investigation was carried out in 1999. The Council says that since 1999 the complainant has contacted the Council at approximately six month intervals. He has essentially asked the same question, formulated in different terms, about the same subject, namely the planning history of the neighbouring property.
18. The Council provided as examples two similar requests the complainant submitted to it, the first on 5 January 2011:

"The council have conceded that no residential use exists for the property in planning application 317-473. Could you explain to me how the council can allow residential development to take place without a change of use being granted. All I require from you is an explanation please."

The Commissioner had issued a decision notice in respect of this request on 19 September 2011 - FS50378227. He found that the request was 'manifestly unreasonable' and that the Council had correctly applied regulation 12(4)(b) to it. The Commissioner agrees that the 5 January 2011 is similar to Request A.

The complainant submitted the following request on 10 January 2011 and again, the Council refused to comply with it under regulation 12(4)(b). The Commissioner agrees that this is similar to Request B.

"Could you give me the dates of the four year period the council have accepted as being a residential use for the bungalow at [redacted]"

19. The Council has also told the Commissioner that:
 - The complainant has been granted access to the relevant history files.
 - The complainant referred the matter to the Local Government Ombudsman on two occasions and the Ombudsman has indicated that it will no longer investigate his complaint.

- The Information Commissioner has issued a further two decision notices in respect to other complaints the complainant submitted to him - FER0419413 on 24 October 2011 and FER0481077 on 6 June 2013. The requests in question concerned the same planning matter and the Commissioner decided on both occasions that the requests were manifestly unreasonable.
 - The complainant appealed FER0481077 to the Information Tribunal. The Tribunal dismissed the appeal on 14 October 2014 - EA/2013/0122. The Tribunal said that the request that was the subject of the appeal appeared to be "*another attempt to engage the Council and its staff with the same issue. It is a continuation of the same campaign...this has placed a clear burden on the Council and its staff*".
 - On a separate occasion, the Council has advised the complainant that his concern is a civil issue on which he should seek his own legal advice. The Commissioner understands that the complainant has to date not sought a determination by the court.
20. The Commissioner has considered the complainant's arguments, the background to his requests and the Council's submission. His conclusion is that the three requests the complainant submitted to the Council in February this year are substantially similar to previous requests that he has submitted to it, some of which the Commissioner and the Information Tribunal have found to be manifestly unreasonable. The requests relate to the planning history of the same site and request substantially similar information to previous requests the complainant has submitted.
21. Echoing the Tribunal's conclusion, the Commissioner considers that the requests appear to be part of the same 'campaign' by the complainant to establish that there has been an error or deliberate fraud in the planning process in respect of this site. The Commissioner notes that the complainant has been corresponding with the Council and its predecessor about this matter for approaching 25 years. The Commissioner considers that dealing with his three latest requests would be a continuation of the burden that the Tribunal has said dealing with his previous correspondence has caused the Council.
22. The Commissioner is satisfied the requests of February 2015 are manifestly unreasonable and that the Council is correct not to comply with them. The Commissioner told the complainant that this was his assessment, provided his reasoning, and invited the complainant to withdraw his complaint.

23. The Commissioner notes that the complainant has been polite and agreeable during the Commissioner's investigation however he was not prepared to resolve the case informally. He has persisted with his argument that the Council's records proved that mistakes had been made and that it is up to the Commissioner to ensure that these mistakes are corrected. In response, the Commissioner again clarified that the nature of his role is not, as the complainant appears to believe, to correct records or alleged mistakes made by the council. The Commissioner's jurisdiction is limited to considering access to information and whether the requests made in this case were manifestly unreasonable.

Public interest test

24. Unlike section 14(1) of the FOIA, there is a public interest associated with the exception under regulation 12(4)(b). In practice however it makes no difference to the outcome since any legitimate interest in complying with the requests is taken into account in the overall assessment of whether a request is manifestly unreasonable. However, the Commissioner would again like to take the opportunity to make the general point that the FOIA and the EIR give members of the public unprecedented rights to access recorded information held by public authorities. It is important that those rights are exercised responsibly. In the Commissioner's view the complainant has again not exercised his rights responsibly. If there is any remedy to his concerns, it clearly lies elsewhere. The public interest in protecting public resources, and the reputation of the legislation, far outweighs the public interest in responding to these requests.

Other matters

25. The Commissioner must make a decision under section 50 of the FOIA unless it appears to him that the application for a decision is in itself frivolous or vexatious. The Commissioner has, on this occasion, exercised his discretion and issued a decision notice despite the lack of obvious merit to the application. However, and as noted in FER0481077, the Commissioner again highlights to the complainant that should he submit any similar complaints to the Commissioner, the Commissioner may be minded to exercise his discretion *not* to consider the application in accordance with section 50(2)(c).

Right of appeal

26. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals
PO Box 9300
LEICESTER
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

27. 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.
28. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Pamela Clements
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