

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

**Date:** 23 March 2015

**Public Authority:** Eynsford Parish Council  
**Address:** Parish Office  
Priory Lane  
Eynsford  
DA4 OAY

**Decision (including any steps ordered)**

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1. The complainant requested various items of information relating to railway sleepers placed along one edge of an access road into a car park owned by Eynsford Parish Council ("the council"). The council said that the requests were vexatious under section 14(1) of the Freedom of Information Act 2000 ("the FOIA"). The Information Commissioner's decision is that some of the requests were correctly refused using section 14(1) and the remaining requests were excepted under regulation 12(4)(b) of the Environmental Information Regulations 2004 ("the EIR"), which relates to manifestly unreasonable requests. The public interest favoured withholding this information. The Commissioner has found that the council breached regulation 14(2) and 14(3)(a) and (b) for failing to rely on regulation 12(4)(b) of the EIR. The Commissioner does not require any steps to be taken.

**Request and response**

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2. On 23 July 2014, the complainant requested information from the council in the following terms:

*"Under the Freedom of Information Act, please provide the following information:*

*When were the sleepers on the approach to Castlefields car park first installed?*

*When were they first painted white?*

*How long is it since the ivy was cleared and new white paint applied?  
How many times has this been done since they were first installed?*

*The clerk assures me that they are being painted for safety. How many accidents have there been during the many months that the sleepers were almost completely obscured?*

*How much did installation of the sleepers cost? What is the cost of maintenance?*

*Please confirm that the young girl charged with painting them was paid at least the minimum wage.*

*All accounts pertaining to these sleepers are required".*

3. The council did not send a response.
4. Following an initial complaint to the Commissioner about the lack of response, the council wrote to the complainant on 18 November 2014 stating that the request was considered to be vexatious under section 14(1) of the FOIA and it was therefore not going to respond. The council told the complainant to appeal to the Information Commissioner ("the Commissioner") if she was unhappy with the refusal. For clarity, the council explained to the Commissioner that it initially considered that it was not appropriate to respond to the request in accordance with section 17(6) of the FOIA because it had previously told the complainant that it would not enter into further correspondence. The council subsequently decided to issue a refusal notice.

### **Scope of the case**

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5. The complainant contacted the Commissioner on 17 December 2014 to complain about the way her request for information had been handled. She asked the Commissioner to consider whether the council had correctly refused to respond to her requests using section 14(1) of the FOIA.

## Reasons for decision

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### The EIR

6. Regulation 2(1)(c) of the EIR provides that environmental information is any information on activities affecting or likely to affect the elements of the environment listed in regulation 2(1)(a). One of the elements listed is land.
7. This request was handled by the council under the FOIA. However, the Commissioner considers that some of the requests should have been considered under the EIR. This is because some of the requests are concerned with the installation of the sleepers. Installing sleepers would have affected the land and this information is therefore environmental according to the EIR.

### Section 14(1) of the FOIA and regulation 12(4)(b) of the EIR

8. Section 1(1) of the FOIA provides a general right of access to recorded information that is held by public authorities. 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".*
9. Regulation 12(4)(b) of the EIR provides the following:  
  
*"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".*
10. In accordance with regulation 12(1)(b), information may be withheld under regulation 12(4)(b) if:  
  
*"...in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information".*
11. The Commissioner has published guidance on applying section 14(1) of FOIA which includes information on how to apply this balancing exercise. For ease of reference, it can be accessed here:

<https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

12. While the guidance above is focused on section 14(1) of the FOIA, the Commissioner's general approach to applying regulation 12(4)(b) of the EIR is the same in relation to vexatious requests.
13. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious rather than the individual submitting it. Sometimes, it will be patently obvious when requests are vexatious. 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.
14. As in many cases which give rise to the question of whether a request is vexatious, the evidence in the present case shows a history of previous information requests and various difficult encounters between the parties. The council relies on this history when characterising these request as vexatious.
15. The background to this matter is that the complainant and her husband have been in correspondence with the council since 1994. The council said that this contact had largely been in relation to the council's car park. It appears that an original complaint arose because of lighting in the car park, which the complainant's husband found interfered with astronomical observation. The council supplied a copy of a letter dated 16 June 1994 from the complainant's husband, in which the complainant's husband had enclosed a copy of an edition of the magazine Astronomy Now, which included criticism of the lighting. The complainant's husband also complained to his local MP about the lighting. The complainant and her husband were dissatisfied with the attempts made to resolve this issue.
16. Subsequently, the council wrote to the complainant and her husband to remind them that vehicles are not allowed to park on the grass verge only in the designated marked spaces. They did so because it appeared that a car belonging to the complainant and her husband was regularly parking on the grass verge. The complainant and her husband questioned whether it was appropriate to ask them not to park on the verge and continued to park on the verge.
17. A number of additional disputes arose following these exchanges, relating to a wide variety of issues connected to the car park. This included complaints that:
  - The proposed increases in parking charges were unjustified

- Money used for the licence fees was being misused
  - The access road was too narrow causing damage to cars from passing vehicles
  - There were drainage and subsidence issues, which the complainant and her husband said had caused a puddle on the road above their back garden and an overflow that had flooded the rear ground floor of their house. They added that the drains were not maintained and one of the parking spaces next to a puddle had subsided
  - There was a shortage of visitor parking and spaces had been allocated for allotment users inappropriately
  - Overhanging trees on the access road had caused damage to the complainant and her husband's car because of overhead birds, and had affected the complainant and her husband's enjoyment of their property
  - General lack of maintenance
  - A new licence had been introduced without consultation or explanation
  - The council's actions had been unlawful
18. As well as complaints about the car park, the complainant and her husband complained persistently about the way in which the council had treated them and the council's handling of the issues. In a letter of complaint to the Commissioner, the complainant refers to the council as secretive, petty and unprofessional and that the refusal to respond to the requests forming the subject of this complaint is a "demonstration of heel-dragging contempt". The complainant and her husband frequently complain that the council is dismissive of their concerns and is abusive or threatening in its approach.
19. The lack of agreement between the parties concerning action on the above issues ultimately led to legal advice and action being taken against the complainant's husband. In March 2005, the council wrote to the complainant's husband about his persistent parking on the grass verge, contrary to the licence agreement terms. It informed him that following legal advice, it would like to warn him of the possibility that the vehicle could be towed away. Legal action was taken in response to the withholding of licence fees and partial payments. In October 2008, the complainant's husband was ordered to pay the outstanding arrears by the court. The complainant's husband continued to default on payments and in June 2010, the council agreed to commence legal proceedings again to recover the outstanding debt. A judgement was made against the complainant's husband in September 2010. However, it was necessary for the council to pursue a further claim in the small claims court for non-payment of fees in May 2013.
20. The council said that it had decided to treat the requests as vexatious in view of the complete context and history of the matter. The council told the Commissioner that it had refused these requests because it

considered that they demonstrate an unreasonably persistent approach to issues concerning the car park.

21. The council supplied evidence to the Commissioner demonstrating that the disputes had generated a large amount of contact with the council dating back to 1994 including various requests for information. All of the correspondence and requests were clearly connected to disputes about the car park. These requests covered a wide range of information including:
  - In March 2005, a request to see the accounts relating to car park expenditure for the past 10 years
  - In October 2008, a request for a copy of a tree surgeon's bill for work done to trees overhanging the car park, the last three years accounts relating to all expenditure, and details of any other partial or non-payments for parking spaces in the last 10 years
  - In November 2008, a request for accounts that show income from individual parking spaces for the last three years
  - In January 2009, a request for the bill for the removal of the parking space markings in the road
  - In July 2009, a request for a copy of the risk assessment relating to the installation of the railway sleepers, names of those responsible for the risk assessment and approving the scheme, and the bill for the installation
  - In May 2013, a request for a copy of the clerk's job description and confirmation that the clerk was a member of the Society of Local Council Clerks
  - In June 2013, a request for a letter from a local farmer about the car park's creation in 1987
  - In July 2013, a request for minutes relating to the car park from 1987 and 1988
22. The council's argument is that continuing to engage with the complainant through information requests is an unproductive exercise since it is apparent that it is not going to resolve the ongoing disputes and animosity that has arisen. It said that it had refused the latest requests forming the subject of this complaint because it had demonstrated an unwillingness to engage in a helpful way with the council. To illustrate the point, the council provided information to the Commissioner showing that it had made various attempts to resolve the concerns raised by the complainant and her husband.
23. The council supplied a letter dated 12 January 1995 in which the council refers to the issues with the lighting in the car park. In the letter, the council said that it had considered a number of options over the last few months and had sought advice from professional bodies. It informed the

complainant of its intentions to modify the lighting and it described the proposed changes.

24. The council also supplied a copy of a letter to the Commissioner dated 25 October 2005. This was to inform the complainant of work proposed for the car park. This included a new "soakaway" and drain clearance every month, cutting back the trees obscuring the lights, and renewing the white markings. The council said that it had been informed by several contractors that resurfacing of the site was not necessary. It said that the car park and access road are inspected by councillors on a bi-monthly basis and every effort is made to follow up on issues raised at these inspections.
25. On 16 October 2007, the council's Chairman wrote to the complainant's husband and amongst other issues, referred to the concerns about the trees. He specifically said that an assessment of the trees had been requested from a third party, with the aim of reducing the trees as much as possible. A further letter on 19 December 2007 confirmed the work to be carried out on 15 February 2008. In a further letter on 2 December 2008, the council confirmed its intention to remove three car parking spaces in the access road in order to improve access to and from the car park for all users, to prevent damage to the kerbs and to avoid problems with leaf and bird droppings.
26. On 7 August 2009, the council wrote to the complainant and her husband about the railway sleepers that form the subject of the complaint to the Commissioner. It said that this had been done to remove the risk posed by car obstructions. It said it did not consider them to be dangerous and they are painted white for visibility.
27. The council also argued that the tone of the correspondence from the complainant and her husband is frequently aggressive and abusive, and includes personal allegations about councillors and employees. The council particularly highlighted a letter dated 2 January 2014 which accuses an employee of trespassing on the complainant's property. It also highlighted a letter dated 7 January 2014 which accuses another employee of "*wasting public money attempting to support your blatantly obvious and provable fiction*". The council alleged that an employee had also been subject to verbal abuse from the complainant, and this was reported to the police. The council said that it had installed a panic alarm in its offices as a result of this incident, and to protect its employees in the future.
28. The council said that dealing with the correspondence had been a significant burden, and it had tried to highlight this to the complainant and her husband, however, it is clear that they had no intention of modifying their behaviour. On 7 August 2009, the council wrote to tell

the complainant and her husband that it considered it had answered all reasonable questions and in order to conserve its resources, it would not enter into further correspondence on the issues concerned. The response on 28 August 2009 was that this represented an "*admission of guilt*".

29. Finally, the council said that the correspondence was designed to cause a disproportionate and unjustified level of disruption, irritation and distress to the council. It said that much of the information requested in the past is already in the public domain and would be easily accessible to the complainant and her husband if they would visit the council offices not far from their home. The council said it had referred to this option but it had not been taken up and other repeated invites to meetings and mediation had been refused.

30. In a letter to the Commissioner, the complainant disputed the claim that her requests are vexatious. She said the following:

*"As I understand it, the term vexatious is used when significant abuses have been indicated in corporate or high cost, important cases. Further there have no abusive or aggressive language; burden on the authority; personal grudges; unreasonable persistence; unfounded accusations; intransigence; frequent or overlapping requests, deliberate intention to cause annoyance; scattergun approach; disproportionate effort; no obvious intent to obtain information; futile requests; frivolous requests on our part, as they may claim.*

*This is a petty dispute of their own making, which seems an extreme and unjustifiable length to go to hide the cost of a dozen or so railway sleepers purchased from public funds."*

31. The Commissioner is aware from correspondence sent to him by the council that the complainant and her husband have concerns about the safety and legality of the railway sleepers. They believe that the sleepers are dangerous, break health and safety and traffic regulations and damage the local environment as well as being a poor use of licence payers' money. The complainant's husband also alleged when defending a legal claim against him that the council's installation of the sleepers was a "*purely vindictive act*" which had "*the sole purpose of inconveniencing me and my family*" because it prevents parking at the end of his garden. The complainant's husband said that the police had called on him, at the request of the parish council, about posters complaining about the sleepers, which were not put up by him.

32. The Commissioner has outlined at paragraph 12 of this notice the nature of the various other complaints made relating to the car park. The complainant's husband said that the council had persistently failed to



maintain the car park properly and this had caused various problems over the years, including flooding to his house. He said that the lighting issue had only been satisfactorily resolved following a change in the law which forced the council to turn the lights off. He said that he had been forced to withhold licence fees because of the council's failure to address issues with the overhanging trees. He said that the allocation of three parking spaces some distance from his house, again overhung by trees though less so, was victimisation. He said the police had called on him at the request of the council on two occasions, the second time about extra cars being parked. He said while he would concede that he did have extra cars parked, other people did too, including a member of the council. He is also particularly unhappy with changes to the licence, which he says was done without appropriate consultation.

33. Turning now to the issue of whether the requests were vexatious in the Commissioner's view. It is clearly a matter of public interest that public authorities are accountable and transparent about the decisions they make. In this particular case, the complainant has expressed concerns about the use of railway sleepers in the road, and these requests are clearly linked to those ongoing concerns about the safety of the sleepers, the rationale for their installation and whether they represent a good use of licence payers' money. While the Commissioner accepts that there is a public interest in these issues, the Commissioner does ultimately agree with the council that the complainant and her husband's approach to the issues that have arisen concerning the car park have been disproportionate as a whole.
34. It is fair in the Commissioner's view for the council to consider these requests in the context of the wider pattern of behaviour by both the complainant and her husband, rather than viewing the requests in isolation. They are clearly part of an ongoing course of dissatisfaction with the council's actions concerning the car park by two individuals, clearly acting together. In this case, the council has been able to demonstrate that it has tried to engage with the complainant and her husband, responding to many requests and complaints. A large amount of requests and complaints have been sent to the council over a very long period of time, and the Commissioner accepts the council's point of view that the latest requests demonstrate an unreasonable level of persistence and preoccupation with the car park.
35. The evidence supplied to the Commissioner by the council suggests that attempts to resolve the complaints have often been rejected out-right in a confrontational and uncompromising manner. Against this background, the Commissioner agrees with the council that responding to these requests would not resolve the underlying complaint about the sleepers which dates back to at least 2009, but would instead prolong the argument about whether or not the sleepers should be removed. The

complainant and her husband have made it clear that the sleepers should be removed in their opinion but the council has said that it does not accept that the sleepers are dangerous and does not intend to remove them. Not being satisfied with any view or solution that differs from one's own, and an unwillingness to engage, are common characteristics seen in cases where section 14(1) of the FOIA applies or regulation 12(4)(b) of the EIR.

36. The following examples of this behaviour have been taken from correspondence sent by either the complainant or her husband to the council:

*"In these circumstances it is perfectly reasonable to demand that you turn the lights off or resign"* (letter dated 16 June 1994)

*"The time for debating this matter is long gone, action is all that is required"* (letter dated 10 July 1994)

*"If you do not take action soon, we will be left with no alternative but to call in a tree surgeon to deal with the problem. The cost of this will be deducted from future parking payments, although we have already paid for this many times over. Obviously any further payments will be reasonably withheld until you rectify these problems".*

*"The answers to these questions should be simple, straightforward and hopefully already thought through. They certainly do not warrant any sort of meeting to answer them"* (9 March 2009).

*"There is no point in us attending your meeting as your actions on this matter in the real world are indefensible. The only thing of consequence you have to discuss is how fast you can remove them [the sleepers] and how fast to reimburse licence payers for squandering their money on your irresponsible & publicly dangerous action"* (15 July 2009)

37. It is apparent in this case that there are clear personal grievances involved, which appear to have motivated, at least in part, this ongoing chain of complaints and requests for information beginning with the dispute over the lights in the car park. This appears to have soured the future exchanges that took place. The council has said that it has found the course of action adopted by the complainant and her husband following the lighting dispute to be harassing, abusive and aggressive not only in relation to the volume of contact and nature, but also its tone. The council highlighted some particular examples as already noted however it also supplied a good deal of correspondence from either the complainant or her husband that is demonstrative of the confrontational tone generally adopted. It is also worth noting that the complainant's husband also wrote in the same tone to other licence holders accusing

the council of being like a deluded, dictatorial secret society. He urged other licence holders to write to the council in blunt terms to express their dissatisfaction.

38. Some parts of the correspondence sent to the council have been quoted below to illustrate the general tone:

*"You should be aware that I never respond positively to threatening letters, nor do I appreciate having my intelligence insulted...Further, and far more importantly, for a considerable period, the car park lighting has as you know, interfered with our right to use & enjoy our property. This will shortly become a Statutory Nuisance. Your attitude gives me no alternative but to reopen this matter, though why you should wish to provoke further adverse publicity in the media, I cannot understand"* (19 November 2004 following a letter from the council asking the complainant's husband not to park on the grass verge contrary to the terms of his licence)".

*"Getting away with a scam like that [charging high fees for car park licence without maintaining it properly] verges on a masterpiece"* (9 June 2005)

*"We want names as they have demonstrated yet again that they are wholly unfit to be in charge of anything"* (20 July 2009 in relation to the installation of the sleepers)

*"You are supposed to be public servants, funded by those of us who have no alternative but to pay for such appalling service. Stop wasting our money & start serving those who pay for your wilful misconduct"* (11 July 2009)

*"The parish council has spent a considerable amount of licence payers' money for the sole purpose of inconveniencing me and my family...It was a purely vindictive act"* (legal claim defence following the installation of the sleepers)

*"'All power corrupts and absolute power corrupts absolutely'. It would seem that in the instance of Castlefields car park Eynsford Parish Council has absolute power"* (7 June 2013)

39. The Commissioner notes that the council also found it necessary to involve the police in the ongoing disputes with the complainant and her husband, on more than one occasion. There have also been verbal disputes and the council has been accused of trespassing. The Commissioner cannot determine exactly what happened in those instances given that the parties dispute the events, however, it is clear that the council was sufficiently troubled by one of these events to change its security arrangements and to make a report to the police.

40. It is apparent to the Commissioner that dealing with the myriad of complaints and requests, and also pursuing legal action against the complainant's husband for non-payment of the car park fees, would have caused a significant and disproportionate burden on the council. In relation to the legal action in particular, the council supplied a copy of a letter to the Commissioner in which a judge had commented that anger at the council was not a defence to a simple contractual claim. It is apparent that withholding the licence fees that were owed to the council, which resulted in legal action being taken, caused a significant burden to the council over a period of time that could not be supported appropriately. While it is obviously right for public authorities to be accountable for their actions, there must be a limit to the amount of resources that a public authority can be expected to spend on dealing with thematic requests and correspondence.
41. The council did also state that it considered that the correspondence was designed to cause disruption, irritation and distress. The Commissioner did not consider that the council argued persuasively that there was an intention to cause disruption, irritation and distress, although it is apparent that this is the effect caused. Given the circumstances, the Commissioner considered that this would have been the effect on any reasonable public authority.
42. In relation to the comments by the complainant, the Commissioner would like to highlight that the word "vexatious" used in section 14(1) is to be given its ordinary meaning as outlined in the Commissioner's guidance. It is not limited to circumstances where "significant abuses have been indicated in corporate or high cost, important cases". The Commissioner has highlighted in his guidance that there are a number of factors that may lead to the conclusion that a request is vexatious however it is made clear that it is not necessary for all of those factors to be met. As outlined above, the Commissioner was satisfied that there were a number of factors present in this case indicating that these requests were correctly refused as vexatious.
43. It is clear to the Commissioner that the complainant and her husband have been angry with the council's course of action over a long period of time in relation to the car park. There has clearly been disagreement over the right way to deal with the issues that arose however the Commissioner was not provided with persuasive evidence to support the allegations that the council had behaved in an abusive or vindictive manner. On the contrary, the correspondence supplied to the Commissioner generally demonstrated a moderate and polite course of correspondence on the part of the council. The evidence generally suggests that the council supplied the information it was asked for, including information dating back to the 1980s, albeit that there were some delays. It also responded to the complaints made about the car

park, albeit in ways which did not satisfy the complainant or her husband.

44. For the avoidance of doubt, it is not the Commissioner's view to judge whether the council made correct decisions in relation to the car park. As described, the Commissioner is able to judge whether there was an appropriate sense of proportion in line with his guidance. He found that there was not for the reasons outlined above. The complainant has not argued persuasively that there is any value in these requests that would outweigh the significant impact on the council over a long period of time, and the Commissioner did not consider that the requests themselves had sufficient inherent value to overturn the reliance on section 14(1) in this case.
45. The Commissioner also considers that regulation 12(4)(b) was engaged in relation to the requests relating to the installation of the sleepers for the same reasons already provided. The Commissioner's analysis above explains why the Commissioner has formed the view that the public interest favoured withholding the information in this case. The Commissioner would add to this the general comments that the legislation gives individuals unprecedented rights to access information held by public authorities. It is important that those rights are exercised responsibly. It is not the intention of the legislation that individuals should be allowed to pursue grievances to an unreasonable extent or that valuable and limited resources should be spent on continuous, unproductive exchanges. In this case, the public interest is best served by protecting the council's resources and upholding the refusal to respond to these requests.

#### **Regulation 14(2) and 14(3)(a) and (b)**

46. Under regulation 14(2), and 14(3)(a) and (b) of the EIR, public authorities must specify the exception relied upon and the matters the public authority considered in respect of the public interest test. This must be done within 20 working days. As the council did not rely on regulation 12(4)(b), it breached these regulations.

## Right of appeal

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47. 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](mailto:GRC@hmcts.gsi.gov.uk)

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

48. 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.
49. 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**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**