

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 3 June 2015

Public Authority: Bradfield Parish Council

Address: Brooks Croft
Heath Road
Bradfield
Manningtree
Essex
CO11 2UZ

Decision (including any steps ordered)

1. The complainant has made four requests for recorded information which all relate to a footpath at Steam Mill Road, Bradfield, Essex.
2. The Commissioner's decision is that Bradfield Parish Council has correctly applied Regulation 13 of the EIR to the first of the complainant's requests and has complied with Regulation 5(1) of the EIR in respect of his second request. The Commissioner has also decided that the Council is entitled to rely on Regulation 12(4)(b) in respect of the complainant's third and fourth requests on the grounds that they are manifestly unreasonable.
3. The Commissioner requires the public authority to take no further action in these matters.

Request and response

4. The complainant has made four requests for recorded information. The terms of the complainant's requests are:

Request 1: 4 September 2014

"...forward me the details of all the documents and information of which

you all received from ECC emailed to you from your Clerk regarding the proposed footpath in Steam Mill Road.”

Request 2: 23 September 2014

1. “How many people that would be directly affected by the footpath in the Steam Mill Road boundary, were sent copies of the letter from ECC Highways in July 2013?
2. How many residents responded directly to you or your office to comment on the drawings?
3. Do you have a formal document that confirms the outcome of a resident consultation held in partnership with Essex County Council?
4. Can you please tell me when the most recent set of letters that were sent to Bradfield Parish Council, from Essex County Council regarding the footpath and were those letters intended for residents?
5. Can you please tell me the dates that Essex County Council and Essex Highways Officers attended the Bradfield Parish Council meeting to discuss the decision to move forward with the proposals?”

Request 3: 1 October 2014

“With reference to the footpath meeting on the 1 October 2014. A comment was made by Cllr Pattern that the footpath was on the minutes/agenda some 6 years ago regarding the consultation taking place. Could you forward the Graphic evident and corresponds relating to this please.”

Request 4: 12 October 2014

“Would you please forward the internal emails between you and Bradfield Parish Councillors, TDC and ECC and responses regarding Steam Mill Road footpath between October 2013 to present date.”

5. On 16 October, following the intervention of the Commissioner, the Council wrote to the complainant making a formal response to his requests for information.
6. In respect of request 1, the Council confirmed that the documents requested on 4 September contained personal data and was therefore exempt under the Data Protection Act.

1. In respect of request 2, the Council provided the following response

- “1. I do not have that information
2. None

3. No
 4. Draft letters intended for residents were sent to BPC for comment on 2 September 2014.
 5. I will have to check and come back to you, alternatively you could ask ECC for that information."
7. In respect of request 3, the Council advised the complainant that it, 'must refuse your request as vexatious under section 14(1)'.
 8. In respect of request 4, the Council determined that this request should also be refused on the grounds that it is vexatious.

Scope of the case

9. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
10. The Commissioner's investigation concerned whether the Council has handled the complainant's requests in accordance with the provisions of the EIR; in particular whether the Council has provided the complainant with recorded information under Regulation 5(1) and whether it is entitled to rely on Regulations 13 and 12(4)(b).

Reasons for decision

11. The Commissioner has considered the nature of the information sought by the complainant. He has noted that the information relates to the creation of a footpath at Steam Mill Road, Bradfield, Essex. In the Commissioner's opinion the information sought by the complainant falls to be considered under the Environmental Information Regulations 2004.
12. Regulation 2(1) of the EIR defines what constitutes 'environmental information'. Subsections (a) to (c) state –
 - '(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 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.'

13. The Commissioner considers that the phrase 'any information...on' should be interpreted widely in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact.

Request 1

14. The Council has provided the Commissioner with clarification concerning the information it holds in respect of the complainant's first request: The relevant information consists of copies of letters which were to be sent to residents of Bradfield Road by Essex Highways.
15. The letters were to be sent to individual residents of Bradfield Road, with each letter outlining the specific effect(s) the proposed footpath would have on the particular properties and detailing the work to be carried out at each resident's home.
16. The letters were sent to the Council so that councillors could provide their comments.
17. Having sent Bradfield Parish Council copies of its draft letters, Essex County Council telephoned the Clerk of Bradfield Parish Council to advise him that the letters contained errors and that revised letters would therefore be sent to the residents.
18. The Council was therefore asked not to respond to the draft and incorrect letters which Essex Highways had sent it.
19. The Council considers that the draft Essex Highways letters constitute the personal data of their intended recipients. It asserts that disclosing these letters would contravene the first data protection principle. The Council emphasised that the letters relates to the residents homes and therefore it is considered private information.

Regulation 13 – Personal data

20. Regulation 13 of the EIR provides an exception to disclosure of personal data where the applicant is not the data subject and where disclosure of the personal data would contravene any of the data protection principles.

21. In order to engage regulation 13 the information sought by the applicant must satisfy the definition of personal data provided by section 1(1) of the Data Protection Act 1990 ("the DPA").
22. Section 1(1) of the DPA defines personal data as:

"data which relate to a living individual who can be identified (a) from those data, or (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller."
23. In order to determine whether a public authority may disclose personal data under the regulation 13 of EIR, the public authority must determine whether such disclosure would not contravene the first data protection principle.
24. The first data protection principle states:

"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—

 - (a) at least one of the conditions in Schedule 2 is met, and
 - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met."
 25. In order to satisfy the first data protection principle the public authority must conclude that the processing is fair to the data subjects and also would satisfy at least one condition from Schedule 2 of the DPA, and, where the requested information is sensitive personal data, at least one condition from Schedule 3 of the DPA.
 26. In this case the Commissioner has determined that the Council is correct to withhold the draft and inaccurate letters which were intended to be sent to residents of Steam Mill Road. The Commissioner considers that the disclosure of these letters would be unfair to the intended recipients of those letters, as they would have no reasonable expectation that their correspondence would be put into the public domain by the Council.
 27. In the absence of fairness, the Commissioner has not gone on to consider whether the disclosure of the withheld letters would satisfy any of the conditions contained in Schedule 2 of the DPA.

Request 2

Duty to make environmental information available on request

28. Regulation 5(1) of the EIR states that –

"...a public authority that holds environmental information shall make it available on request."

29. The Commissioner has sought to determine whether, on the balance of probabilities, the Council holds the information sought by the complainant in his second request.
30. The Commissioner makes this determination by applying the civil test of the balance of probabilities. This test is in line with the approach taken by the Information Rights Tribunal when it has considered whether information is held in cases which it has considered in the past.
31. The Commissioner investigated this complaint by asking the Council a number of questions about the searches it has made to locate the information sought by the complainant and questions about its possible deletion/destruction.
32. The Council has informed the Commissioner that it holds recorded information relevant to the Steam Mill Road footpath in electronic and paper-based records. All of its electronic records are held on a laptop computer which is managed solely by the Parish Clerk and all correspondence is also held and managed by the Clerk.
33. The Council asserts that it is small public authority and the information it holds about the proposed footpath is well known to the Clerk. Because the Clerk is the sole employee of the Council it is he who manages its administration. This being the case, the Council assures the Commissioner that its Clerk would have used appropriate search terms to search for the information which the complainant seeks, for example the names of the senders of emails.
34. Applying the civil test of the 'on balance of probability', and in the absence of any evidence to the contrary, the Commissioner has decided that the Council does not hold any further recorded information relevant to the complainant's second request. The Commissioner's decision is therefore that Council has complied with Regulation 5(1) of the EIR.

Requests 3 and 4

35. In respect of the complainant's third request, the Council has assured the Commissioner that it has searched all of its minutes going back to 2007 and it has not found any mention of the Steam Mill Road footpath being discussed.
36. Notwithstanding this assurance, it is the Council's position that both the complainants third and fourth requests are vexatious.

Regulation 12(4)(b) – where the request is manifestly unreasonable

37. There EIR makes no provision which allows a public authority to refuse to comply with a request for recorded information because the request is vexatious. However, regulation 12(4)(b) of the EIR allows a public authority to refuse to comply with a request where it is deemed to be manifestly unreasonable.
38. There is no definition of 'manifestly unreasonable' under the EIR. The Commissioner considers that 'manifestly' implies that the request should 'obviously' or 'clearly' be unreasonable.
39. A request can be manifestly unreasonable for two reasons: Firstly if it is vexatious and secondly where the public authority would incur unreasonable costs or where there would be an unreasonable diversion of resources.
40. There is no definition of the term "vexatious" in the Freedom of Information Act, however the issue of vexatious requests has been considered by the Upper Tribunal in the case of *The Information Commissioner and Devon County Council v Mr Alan Dransfield (GIA/3037/2011)*. In the Dransfield case the Tribunal concluded that the term could be defined as "manifestly unjustified, inappropriate or improper use of formal procedure." The Tribunal identified four factors likely to be relevant in vexatious requests:
 - The burden imposed by the request on the public authority and its staff
 - The motive of the requestor
 - Harassment or distress caused to staff
 - The value or serious purpose of the request.
41. The Upper Tribunal's decision established the concepts of "proportionality" and "justification" as being central to any consideration of whether a request for information is vexatious.
42. The key to determining whether a request is vexatious is a consideration of whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear it is necessary to weigh the impact of the request on the public authority against the purpose and value of the request. To do this a public authority must be permitted to take into account wider factors associated with the request, such as its background and history.

43. In this case, by inference of the Commissioner, the Council is relying on regulation 12(4)(b) by virtue of the complainant's third and fourth requests being vexatious.
44. The Council considers that to comply with requests three and four would necessary involve a disproportionate use of its resources and would cause significant stress and disruption.
45. The Council points out that the number of records which fall within the scope of request four is very significant: It assures the Commissioner that complying with this request would require the Clerk to extract and copy a large amount of information, which to a large extent has already been supplied to the complainant. The Council asserts that a considerable amount of time would be required to undertake this activity and that this would place an unnecessary burden on its Clerk.
46. To illustrate the effects of the complainant's requests are having on the Council; the Council has provided the Commissioner with evidence of accusations the complainant has made about the Council's corruption and a letter of resignation from one of its councillors citing the complainant's behaviour as one of the reasons behind that resignation.
47. It is clear to the Commissioner that the Council has purposefully engaged with the complainant in the past. It has answered his questions and has responded properly, so far as can be adduced, to his requests for recorded information.
48. The Complainant's continued correspondence with the Council illustrates to some extent that he is often dissatisfied with the information he is sent or with answers given to him by the Council. The evidence seen by the Commissioner appears to confirm that each time the Council responds to a request or query the complainant is likely to make further requests or queries.
49. In view of the representations made by the Council and the supporting evidence it has provided to him, the Commissioner has decided that the Council is entitled to rely on Regulation 12(5)(b) of the EIR: There are sufficient grounds for the Commissioner to accept that the complainant's requests represent a pattern of requesting behaviour which is burdensome and which is placing a significant stress on the Council in terms of staff, individual councillors and its limited resources.
50. The Commissioner cannot ignore the effects that the complainant's requests are having on the Council. These effects can properly be characterised as harassing the Council.

51. The Commissioner finds that the complainant's pursuit of information from the Council has now passed the point where a reasonable person would conclude enough is enough: It has crossed the threshold where the requests have become vexatious and on that basis they are manifestly unreasonable.

The public interest test

52. The Commissioner has gone on to consider whether the balance of the public interest in maintaining the exception outweighs the public interest in disclosing further information.
53. The Commissioner will always give weight to factors which favour the disclosure of information which would increase the public's understanding of the actions taken by the Council and of the processes by which it makes its decisions. Such disclosure of information increases transparency and provides accountability of public authorities.
54. In this case the Council has already provided the complainant with information and answers about the proposed footpath. The Commissioner therefore concludes that the information already provided by the Council has gone some way in satisfying any public interest in this matter.
55. In the Commissioner's opinion there is little or no public value to be had by asking the Council to spend further time or expense in responding to the complainant's requests, which, as the evidence suggests, are unlikely to satisfy his on-going scrutiny of the Council.
56. Taking all of the above into consideration, the Commissioner has decided that Regulation 12(4)(b) of the EIR has been properly applied by the Council.

Right of appeal

57. 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

58. 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.
59. 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