

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

**Decision notice**

**Date:** 29 June 2016

**Public Authority:** Leeds City Council  
**Address:** Civic Hall  
Calverley Street  
Leeds  
LS1 1UR

**Decision (including any steps ordered)**

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1. The complainant has requested Leeds City Council provide him with recorded information which relates to the Council's handling of his complaints connected to a wall at Grange Cottage, Ledsham. The Council refused the complainants request in reliance on the exception to disclosure provided by Regulation 12(4)(b) of the EIR.
2. The Commissioner's decision is that Leeds City Council has properly applied Regulation 12(4)(b) to the complainant's request and it is entitled to withhold any information it holds which is relevant to his request.
3. The Commissioner requires the public authority to take no further action in this matter.

**Request and response**

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4. On 26 November 2015, the complainant wrote to Leeds City Council and requested information in the following terms

"Please provide full and frank responses to the following: -

- a) In view of the clear issue in the complaint of conflict of interests of investigating officers; why did you not give correct notification to me that [a named person] had been removed from the role of

investigating officer and you had been appointed? Please provide all copies of correspondence dealing with this matter.

- b) Prior to investigating this complaint had you personally been party to the decisions, opinions, meetings, discussions or correspondence related to this planning matter or complaints? If so please explain in detail in full exactly what this was.
- c) What is your position in the LCC structure? Please include your relationship with [a named person], [a second named person], Planning Compliance and Planning Conservation Officers.
- d) Who did you interview as part of this complaint investigation? Please provide a list of interviews, attendees, dates and related communications and all notes taken by officers.
- e) You advise you interviewed [a named person]: Please identify clearly from notes of the meeting that each of parts a) to c) of my complaint re [a named person] dated 21<sup>st</sup> September '15 and the specific responses provided by [a named person]. If you did not specifically ask or specifically record a response to any of these parts of the complaint – then please explain why not.
- f) I note you indicate you personally intended to attend the Ledsham Parish Council meeting on 24<sup>th</sup> June '15 to explain LCC's reason for not pursuing action against the Applicant re the wall, but you had not been available. In view of this; please explain how you could have been involved in the decision not to proceed and justifying this position to Ledsham Parish Council on behalf of LCC Planning Services and also suitably free of conflict of interests to be able to [be] appointed as investigating officer or a complaint which has concerns that LCC (you [a third named person]) has not handled the matter correctly.

Please note that all requests for documents are not only supported by normal procedures of openness but also The Freedom of Information Act, Environmental Information Act [sic] and the overriding Data Protection Act."

- 5. The Council responded to the complainant's request on 3 December. The Council explained why it was appropriate for its Chief Planning Officer to investigate the complainant's complaint and that this response was the Council's final position.
- 6. The Council pointed out that the complainant's complaint had been independently investigated by the Council's Internal Audit Service and that he now had the opportunity to refer his concerns to the Local Government Ombudsman.

7. The complainant was advised that his queries do not constitute information requests, except for parts 'c' and 'd' which concern Mr Hill's position within the Council structure and the interviews which were conducted. The complainant was provided with copies of recorded information where it is held by the Council and informed where no relevant information is held.
8. The Council referred the complainant to its previous mention of Regulation 12(4)(b) in February 2015, where it was considered that given the nature of his correspondence at that time, any future correspondence on this same matter would be treated as being manifestly unreasonable. The Council advised the complainant that it was now necessary to do so on this occasion. The Council stated that the following factors exist: Unfounded accusations; unreasonable persistence, burden on the authority, intransigence and futile requests.

### Scope of the case

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9. The complainant contacted the Commissioner on 3 February 2016 to complain about the way his request for information had been handled.
10. The Commissioner has investigated whether Leeds City Council is entitled to rely on Regulation 12(4)(b) to refuse to comply with the complainant's request of 26 November 2015.

### Reasons for decision

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11. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose environmental information to the extent that the request for information is manifestly unreasonable.
12. 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.
13. A request can be manifestly unreasonable for two reasons: Firstly where it is vexatious and secondly where the public authority would incur unreasonable costs or where there would be an unreasonable diversion of resources.
14. 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.
15. 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.
  16. 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.
  17. The Council has advised the Commissioner that it has had regard to the Commissioner’s guidance on vexatious requests.
  18. It has determined that the complainant’s request exhibits unreasonable persistence, a significant burden on the authority, unfounded accusations, a degree of intransigence and is a request which is ultimately futile.
  19. To support its position the Council provided the Commissioner with background information and a chronology of the planning history associated with the wall at Grange Cottage, Ledsham.
  20. According to the Council, the complainant first raised concerns about a particular wall in 2011 whereby he expressed a view that the Council should take enforcement action against its owner.
  21. After careful consideration, the Council exercised its discretion and determined that it would not be expedient for it to pursue enforcement action. During this period, the Council was mindful of the complainant’s concerns and its officers endeavoured to keep him up-to-date on proceedings. This involved the Council in answering a number of

requests submitted under the EIR, whereby 59 pages worth of information was disclosed to him.

22. In addition to the above, the complainant submitted four separate complaints to the Council which fell to be dealt with under its complaints procedure. A further complaint was submitted to the Council's Internal Audit Team which suggested that the Council was acting inappropriately.
23. An investigation was conducted by the Internal Audit Team which found no wrongdoing on the part of the Council and that the actions of the Council's officers in bringing this matter to its current stage had been taken in good faith.
24. In July 2015 the Council decided that it would not be expedient for it to take enforcement action in respect of the particular wall.
25. The complainant expressed his dissatisfaction with the Council's decision and this led the Council to advise the complainant of his right to complain to the Local Government Ombudsman ("the LGO"), on 9 November 2015.
26. The Council's decision not to pursue enforcement action resulted in the Council receiving further correspondence from the complainant. Ultimately, on 3 December 2015, the Council advised the complainant that he had now exhausted the Council's complaints procedure.
27. The complainant's correspondence contained further requests for information which culminated in the Council advising him that should he submit further requests which concern the wall, they would be subject to an application of Regulation 12(4)(b) on the grounds that his requests were becoming vexatious.
28. The complainant did not submit a complaint to the LGO. Rather, he directed his concerns to the Council's Chief Executive. In correspondence dated 9 December 2015, the complainant submitted a further request for information, namely for, 'all relevant LCC guidelines, rules and codes which apply to officers conducting or involved in complaint or concern investigations'.
29. The Council's Chief Executive provided the complainant with links to the Council's Constitution, the Council's Compliments and Complaints Policy and the Council's Information Access Policy. In respect of the wall, the Chief Executive stated,

'The Council's position on Grange Cottage has been comprehensively stated, and further communication raising additional arguments with the authority will not serve to assist you. If you wish to pursue this matter

further, it must be with the Local Government Ombudsman as opposed to ourselves.'

30. On 10 December 2015, the day after the Council's Chief Executive sent his response to the complainant; the Council received an information request from a different person. The information sought by the new requester was the Council's complaints policies in respect of 'Building Control, Planning, Conservation, Legal and Provision of Information, applicable to officers and members with responsibility over these services'. The new requester's letter was formatted in the same manner as the complainant's request and the Council was drawn to conclude that the request was either submitted by the complainant or by someone acting in concert with him to circumvent the Council's application of Regulation 12(4)(b).
31. The Council provided the new requester with the same information as that provided to the complainant. Having made this response, the Council received further correspondence and requester from the new requester which ultimately resulted in an application of Regulation 12(4)(b).
32. The Council has advised the Commissioner that it has sent or received over one hundred communications to and from the complainant. These have all related to the subject of the wall and have been sent or received since he made his initial complaint.
33. The complainant has corresponded with the Council's Chief executive, the Leader of the Council, the Council's Chief Planning Officer, Internal Audit Officers, the Planning East Team Leader, the Planning Customer Services Manager, officers in Planning Compliance and the Information Practitioner with responsibility for planning.
34. Given the background to this case (outlined above), the Council asserts that the complainant's request is manifestly unreasonable. In the Council's opinion, this background demonstrates unreasonable persistence on the part of the complainant and a significant burden on its officers.
35. The Council considers that it has been as helpful as possible to the complainant in respect of his correspondence. However a point has now been reached where the Council believes that his requests are now being submitted in order to continue his dispute with the authority with respect to its decision to close the particular enforcement case.
36. The Council point to the intransigent manner of the complainant which is expressed in his correspondence. This includes an instance where he submitted a request for information which was identical to one he

submitted previously and where the due date for the first request had not passed. There was also an instance when the complainant submitted a request for information which the Council knew he was already in possession of. Nevertheless, the complainant proceeded to request the information again, and when the Council provided its response, he submitted a complaint that the requested letter did not include a 'time stamp'. In all, the Council provided the complainant with a copy of the same letter on four occasions.

37. The Council submits that the complainant has been unaccepting of its officers' advice and assistance during the period of his protracted correspondence and he has made unreasonable accusations about those officers, suggesting that they were being 'leaned upon' and that legal officers were cooperating in an attempt to 'exempt' themselves from providing information.
38. The Commissioner has considered the Council's representations in respect of its application of Regulation 12(4)(b) and also the document which it provided in support of its position.
39. The Commissioner has noted the persistent nature of the complainant's correspondence and its primary focus being the Council's decision not to proceed with enforcement action in respect of a particular wall. He also notes that the Council directed the complainant to the LGO and that, rather than avail himself of this course of action, the complainant chose to submit even more correspondence and requests.
40. The Commissioner agrees with the Council that the complainants' requests have passed the point where they have become burdensome to the Council and he considers that the complainant's requests have become a burden on the Council, requiring a disproportionate use of the Council's resources.
41. It is apparent to the Commissioner that the Council is likely to be correct in its belief that the complainant is trying to sustain a dialogue with the Council in a matter which has not been concluded to his satisfaction.
42. For a combination of these factors, the Commissioner considers that the complainant has now passed a point where his persistent requests centred on this particular wall have become plainly unreasonable,
43. The Commissioner has therefore decided that it is manifestly unreasonable for the Council to continue to respond to the complainant's requests on this matter. The Commissioner is satisfied that Regulation 12(4)(b) is engaged in respect of the request of 26 November 2015.

## **The public interest test**

44. The Commissioner has gone on to consider whether the balance of the public interest in maintaining the exception outweighs the public interest in responding to the complainants' requests of 12 April 2015.
45. 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.
46. In this case the Commissioner agrees with the Council: He is satisfied that there is little public interest to be gained by placing any further information into the public domain in connection to the particular wall of concern to the complainant.
47. The Commissioner is satisfied that the Council has properly explained its actions and decision in respect of the wall to ward members and to a public meeting of the local Parish Council.
48. In essence, the Council has taken a decision which it is entitled to make. The Council has been transparent in its reasoning and it has endeavoured to address the complainant's concerns. The Commissioner considers that it is significant that the complainant has not availed himself of his right to refer his matter to the LGO.
49. The Commissioner has difficulty in discerning how the Council's complying with the complainant's request (above) can further greater awareness of environmental matters, the exchange of views or provide greater public participation in environmental decision making. This is especially the case where, as the Council states, 'there has been little reaction or participation in this matters by other members of the public.
50. It is clear to the Commissioner that issues surrounding this particular wall are very much localised and of limited impact. It is not in the public interest to continue to use public resources to satisfy a complainant who show no sign of being satisfied and who appears to want to continue a dispute of little merit.
51. Having considered the cumulative weight of the above factors, the Commissioner finds that the public interest lies in favour of the Council's position: The Commissioner has therefore decided that the Council has properly applied Regulation 12(4)(b).



## Right of appeal

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52. 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)

53. 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.
54. 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**