

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

Decision notice

Date: 16 June 2016

Public Authority: Cambridgeshire County Council
Address: Shire Hall
Castle Hill
Cambridge
CB3 0AP

Decision (including any steps ordered)

1. The complainant has made a series of requests to Cambridgeshire County Council ("the council") for information relating to a historic planning application and the council's management of the complainant's related information requests. The council refused the requests under section 14(1) of the Freedom of Information Act ("the FOIA") and regulation 12(4)(b) of the Environmental Information Regulations ("the EIR"). The complainant subsequently contested the council's refusal.
2. The Commissioner's decision is that the council has correctly refused the requests under section 14(1) of the FOIA and regulation 12(4)(b) of the EIR. However the council provided its refusal notice out of time, and breached the requirement of section 17(1) of the FOIA and regulation 14(2) of the EIR.
3. The Commissioner does not require any steps to be taken.

Request and response

4. Between 13 April 2015 and 3 August 2015 the complainant submitted 13 information requests. Details of these requests are provided in Annex A.
5. The council has refused these requests on the basis that they are vexatious under section 14(1) of the FOIA and regulation 12(4)(b) of the EIR. This position has been upheld by the council at two internal reviews provided on 26 August 2015 and 10 September 2015.

Scope of the case

6. The complainant contacted the Commissioner on 29 September 2015 to complain about the council's refusal of his requests.
7. The complainant has also contested that the council is not adding his requests to the public 'Disclosure Log' that the council uses to publish online many of the information requests that it has actioned. However this matter falls outside the terms of section 50 of the FOIA, as neither legislation requires a public authority to make requests available through its webpages.
8. The Commissioner therefore considers the scope of this case to be the determination of whether the council has correctly refused the requests under section 14(1) of the FOIA and regulation 12(4)(b) of the EIR.

Reasons for decision

Is part of the information environmental?

9. Information is "environmental" if it meets the definition set out in regulation 2 of the EIR. Environmental information must be considered for disclosure under the terms of the EIR. Under regulation 2(1)(c), any measures that will affect, or be likely to affect, the elements referred to in 2(1)(a) or the factors referred to in 2(1)(b) will be environmental information. The requested information partly relates to a refused planning application. Planning applications can clearly be identified as measures that may affect the elements and/or factors. The Commissioner therefore considers it appropriate to consider those requests that seek environmental information under the terms of the EIR.

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

10. Section 14(1) of the FOIA states that:

Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

10. Regulation 12(4)(b) of the EIR states that:

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;

11. The Commissioner recognises that, on occasion, there can be no material difference between a request that is vexatious under section 14(1) of the FOIA and a request that is manifestly unreasonable on vexatious grounds under the EIR. The Commissioner has therefore considered the extent to which the request could be considered as vexatious.
12. The Commissioner has published guidance on vexatious requests and for ease of reference, this can be accessed here:

<https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>
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 obvious when requests are vexatious, but sometimes it may not. In such cases, it should be considered whether the request would be likely to cause a disproportionate or unjustified level of disruption, irritation or distress to the public authority. This negative impact must then be considered against the purpose and public value of the request. A public authority can also consider the context of the request and the history of its relationship with the requester when this is relevant.
14. While section 14(1) of the FOIA effectively removes the duty to comply with a request, regulation 12(4)(b) of the EIR only provides an exception. As such the EIR explicitly requires a public authority to apply a public interest test (in accordance with regulation 12(1)(b)) before deciding whether to maintain the exception. The Commissioner accepts that public interest factors, such as proportionality and the value of the request, will have already been considered by a public authority in deciding whether to engage the exception, and that a public authority is likely to be able to 'carry through' the relevant considerations into the public interest test. However, regulation 12(2) of the EIR specifically states that a public authority must apply a presumption in favour of disclosure. In effect, this means that the exception can only be maintained if the public interest in refusing the request outweighs the public interest in responding.

Contextual background

15. The Commissioner understands that the requests largely relate to a planning application made in 1969 to then responsible Cambridgeshire and the Isle of Ely County Council. This application, which sought to build a dwelling on an area of land, was refused on the basis that it was outside the local village boundary, with a secondary reason being the affect that the placement of the dwelling would have on traffic safety.

An appeal against this refusal was dismissed by an independent planning inspector in 1970.

16. The complainant subsequently made further planning applications, which came to be refused by then responsible South Cambridgeshire District council and dismissed by independent planning inspectors.
17. Since 1980 onwards, the complainant has raised various complaints with the council in relation to the original planning application. During this time, the council identified that the original refusal was partly based on what was found to be inaccurate traffic accident data. The council apologised to the complainant, but maintained that the refusal was valid.
18. Following continued correspondence through time with senior officers and members of the council, a meeting was arranged with the complainant in April 2004 that was attended by the Chief Executive, Head of Legal Services and Director of Customer Service. This purpose of this meeting was to identify whether new information was held by the complainant that would require action by the council. Following this meeting the council considered that no new action was required. By this time the council had approved a policy on the management of serial complainants, and the council wrote to the complainant in June 2004 to advise how the council would manage subsequent complaints from him. This position was later upheld by the Chief Executive following a challenge by the complainant.
19. A subsequent complaint to the Local Government Ombudsman ("the LGO") was dismissed on the basis that the LGO had no jurisdiction to investigate due the basis of the complaint predating its establishment. In 2007 the complainant sought a Judicial Review of the planning matter, which was disallowed by the court.
20. Since this time, the complainant has repeatedly invited the council to attend mediation to resolve the dispute. However the council has declined on the basis that mediation cannot resolve the substantive issue to the complainant's satisfaction.
21. Since 2005 the complainant has submitted various information requests under the terms of the FOIA and EIR, in addition to subject access requests under the Data Protection Act ("the DPA"). During the substantial disclosure in 2006 of all held information relating to the matter since 1969 (as outlined in in ICO Decision Notice FS50098499), some information was withheld under Schedule 7(1) of the DPA on the basis that was subject to Legal Professional Privilege. The complainant made a request for this specific information on 13 April 2015, to which the council responded under the DPA and maintained the original

exemption (which was subsequently upheld by the ICO in case RFA0599501). In response to this the complainant contested that the information should be considered under the FOIA and EIR. It is therefore from the date of this request (13 April 2015) that the council has applied section 14(1) of the FOIA and regulation 12(4)(b) of the EIR.

The council's position

22. The council has informed the Commissioner that it has refused the requests after consideration of their context. The complainant has been in communication with the council since the 1980s about the refused 1969 planning application, and the matter has been considered by successive senior officers, in addition to being disallowed by the court before reaching judicial review.
23. The council considers that significant public resources have already been cumulatively expended on responding to the complainant's previous requests and wider correspondence. The council has recorded 50 information requests alone which were submitted by the complainant between 1 March 2011 and the date of the first refused request (13 April 2015) on the topic of the dispute. The council considers that there is little public interest in complying with the refused information requests, which ultimately relate to a historic matter that the council is not able to conclude in a way that will satisfy the complainant, and which also seek personal data that has already been correctly withheld under the DPA.
24. The council also considers that the information requests, which include meta-requests about previous requests, have been made in order to place burden on the council, and to pressure the council into revisiting the matter. The council also considers that the complainant has sought to circumvent the council's recent refusal notices under the FOIA and EIR by using an alias to submit further requests.

The complainant's position

25. The complainant has provided the Commissioner with highly detailed submissions in which he outlines his position that the original 1969 refusal of the planning application was flawed, and that the council is responsible for malpractice. He has also confirmed that he has repeatedly invited the council to enter mediation in order to resolve the wider dispute, but that the council has refused to enter this process.

The Commissioner's analysis

26. Firstly, the Commissioner would like to highlight that there are many different reasons why a request may be vexatious, as reflected in the Commissioner's guidance. There are no prescriptive 'rules', although there are generally typical characteristics and circumstances that assist

in making a judgement about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed as vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates them. A commonly identified feature of vexatious requests is that they can emanate from some sense of grievance or alleged wrong-doing on the part of the authority.

27. The Commissioner's guidance has emphasised that proportionality is the key consideration for a public authority when deciding whether to refuse a request as vexatious. The public authority must essentially consider whether the value of a request outweighs the impact that the request would have on the public authority's resources in responding to it. Aspects that can be considered in relation to this include the purpose and value of the information requested, and the burden upon the public authority's resources.

The purpose and value of the requests

28. The Commissioner has reviewed the refused requests and has identified that they relate either to the planning dispute or the council's wider management of the complainant's requests. The grounds of the complainant's concerns were considered by the Chief Executive in 2004 with no action being deemed necessary, and the complainant's application for a judicial review was subsequently dismissed by the courts. It is also noted that the first request which has been refused seeks information that is exempt from disclosure under the terms of the DPA, and which has already been considered and upheld by the ICO under that legislation.
29. Whilst it is understood that inaccurate data may have informed the 1969 decision, it is evident that the matter has been repeatedly reviewed since that time with no further action identified as necessary by either the council or the courts.
30. Although the complainant has provided highly detailed submissions about the dispute, there is no indication to the Commissioner that the requests serve a clear and obvious public value. As such it is appropriate for the Commissioner to consider that the complainant is attempting to use the rights provided by the FOIA and EIR to force the council to revisit a historic matter that has already been extensively considered and addressed.

The burden upon the council

31. It is apparent to the Commissioner that previous requests and associated correspondence has already consumed significant public

resources, and that compliance with the 13 refused requests would place significant burden on the council, who would need to task officers with revisiting both original documents relating to the planning dispute and documents relating to the council's interaction with the complainant. The Commissioner also considers that responding to these requests would be highly likely to generate further requests and correspondence without resolving the complainant's concerns.

The public interest test

32. Regulation 12(1)(b) provides that:

...a public authority may refuse to disclose environmental information requested if-

(b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

33. The Commissioner recognizes that the requests relate to a matter of personal concern to the complainant, and that the disclosure of any further information would represent transparency on the part of the council.

34. However it is apparent to the Commissioner that the requests relate to a historic planning decision, and that the grounds of the complainant's concerns have been repeatedly considered by the council since this time, as well as by the courts. It is also clear that this matter relates to a private interest, and there is no evidence available to the Commissioner that the requests serve a wider public interest that is justified by the significant diversion of public resources that they would cause.

The Commissioner's conclusion

35. Having considered the limited public value of the requests in conjunction with the burden on the council's resources and the corresponding public interest test, the Commissioner has concluded that the council's refusal of the requests under both regulation 12(4)(b) of the EIR and section 14(1) of the FOIA was correct.

Section 17(1) of the FOIA and regulation 14(2) of the EIR

36. Section 17(1) and regulation 14(2) both specify that a refusal notice must be provided no later than 20 working days after the date on which the request was received.

37. Whilst the Commissioner notes that the number of requests submitted has resulted in a complex chronology (outlined in Annex A), it has been

identified that the council provided its initial refusal notice (on 9 July 2015) outside of 20 working days following receipt of the first clear information request under the FOIA and EIR (1 June 2015).

Right of appeal

38. 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

39. 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.
40. 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

Annex A

41. On 13 April 2015 the complainant made the following request (given the council reference *Subject Access Request 675*):

In my submissions in this matter I suggested that the Council had wrongly dealt with my request for disclosure of the 5 documents under DPA and not FOI. They did not deal with this in their report and I took it up with them. This morning I have received an e mail from the IC stating that I should apply to you again specifically under FOI. Presumably if you refuse the application or do not deal with it as you consider it vexatious then I seek internal review and then (if need be) I take your actions back to them.

So I formally make application under the FOI for the disclosure to me of the 5 documents previously identified.

This request was dealt with under the terms of the DPA, and has been considered by the ICO under case RFA0599501, which found that the information had been correctly withheld under that legislation. The complainant subsequently contested that the request should be considered under the terms of the FOIA and EIR, at which time the council confirmed that it was refusing the request under section 14(1) of the FOIA and regulation 12(4)(b) of the EIR.

42. On 1 June 2015 the complainant made a further request (given the council reference *FOI 5364*):

In the summer of 2009 I sought through [redacted name] a meeting with [redacted name], the person who drew the plan that was falsified.

[redacted name] refused a meeting and his email to me (date unknown but probably August 2009) contained phrases like 'he has only minimal recollection of events' and 'on the basis of what he says'. Clearly therefore someone had contacted him. Unless someone concocted these statements!

I therefore require copies of all emails between the Council and [redacted name] and vice-versa and transcripts of all notes of meetings and telephone conversations with him.

The council refused the request under section 14(1) on 28 July 2015. This was upheld at internal review on 10 September 2015.

43. On 11 June 2015 the complainant made a further request (given the council reference *FOI 5397*):

[redacted name] and others before him have always denied that there was anything wrong with the conduct of the 1970 Appeal. I have always maintained that Inquiry Procedure Rules were breached. By inference, there, [redacted name] must have read a different set of Rules to me. Will you please supply a copy of the Rules that he has read and relies upon.

The council refused the request under section 14(1) on 9 July 2015. This was upheld at internal review on 26 August 2015.

44. On 9 July 2015 the complainant made a further request (given the council reference *FOI 5478*):

May I have full details of every 'Article 12' direction issued by the County Surveyor in respect of the B1050 Station Road Wiltingham between 1.1.1970 and 31.12.1975.

The council refused the request under section 14(1) on 5 August 2015. It also advised that the refusal notice applied to *FOI 5478* and *FOI 5480* (both received 9 July 2015), *FOI 5557* (received 17 July 2015), *FOI 5558* (received 20 July 2015), *FOI 5569* (received 22 July 2015), *FOI 5559* (received 28 July 2015), *FOI 5561* (received 29 July 2015), *FOI 5582* and *FOI 5583* (both received 3 August 2015).

This was upheld at internal review on 10 September 2015.