

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

Date: 17 January 2018

Public Authority: Leicester City Council
Address: City Hall
115 Charles Street
Leicester
LE1 1FZ

Decision (including any steps ordered)

1. The complainant has requested information from Leicester City Council ("the Council") that relates to a topographical plan for Millstone Lane and an item mentioned in a document previously provided to the complainant, titled "*Jubilee Square Consultation – Stage 2 Concept Design*". The Council refused to comply with the request as it considered it to be vexatious under section 14(1) of the Freedom of Information Act ("the FOIA") and regulation 12(4)(b) of the Environmental Information Regulations ("the EIR").
2. The Commissioner's decision is that the Council has correctly applied regulation 12(4)(b) of the EIR.
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

4. On 22 and 24 August 2017, following lengthy correspondence related to various issues, the complainant wrote to the Council and requested information in the following terms:

"I am sorry to come back as you have been very helpful. But if that topi plan for 26-30 Millstone Lane could've [sic] forwarded I would be very grateful"

and

"The attached mentions the abridged version of Bar Sandwich. Could the full document be found and forwarded...[sic]"

5. On 31 August 2017 the Council provided an aggregated response to the complainant refusing to provide the information requested. The response stated that the complainant's "... continued correspondence with the Council causes an unjustified level of disruption, irritation and distress ... forming part of a wider vexatious behaviour, and although further requests will be considered on their own merit, at this stage the Council is unwilling to respond to any further matters previously raised", thus applying section 14(1) of the FOIA and regulation 12(4)(b) of the EIR.
6. Remaining dissatisfied with response received, on 3 September 2017 the complainant asked the Council to conduct an internal review.
7. Following an internal review the Council wrote to the complainant on 29 September 2017. It stated that it maintained the original position stated in its letter of 31 August 2017

Scope of the case

8. The complainant contacted the Commissioner on 4 September 2017 to contest the Council's refusal of his requests.
9. The Commissioner considers the scope of this case to be the identification of whether the Council has correctly refused the requests.

Reasons for decision

Is the information requested environmental?

10. Information is "environmental" if it meets a 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 measure that will affect, or 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 relates to the management, maintaining and planned works of the Council on a public square. Such matters can clearly be identified as measures that may affect the elements and/or factors. The Commissioner therefore considers it appropriate to consider the requests as seeking environmental information under the terms of the EIR.
11. Having concluded that the requested information is environmental and consequently covered by the EIR, the Commissioner will only consider the application of Regulation 12(4)(b) of the EIR by the Council when it decided to refuse the request as vexatious.

Regulation 12(4)(b) of the EIR

12. 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;

13. The Commissioner recognises that, on occasion, there is 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.
14. The Commissioner has previously published guidance on vexatious requests¹. 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 to be considered

¹ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

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.

15. While section 14(1) of the FOIA effectively removes the duty to comply with the request, regulation 12(4)(b) of 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 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 the 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.

The context of the request

16. The Commissioner has referred to the submissions of both parties in order to understand the context of the request.
17. The Commissioner notes that the complainant initially contacted the Council on 2 June 2016 requesting information in relation to permits issued to charities for street collections in various locations under the Council's jurisdiction. He continued with other information requests on separate occasions requesting information related to parking fines issued on different locations for different periods of time, topographical plans, blue badge user permits etc.
18. Between 2 June and 3 August 2017 the Council received 7 information requests from the complainant, to which it provided the information requested and provided explanations when requested by the complainant. In addition, the Council confirmed that it offered to the complainant a meeting with relevant Council's officials, but was refused by the complainant.

The Council's position

19. The Commissioner wrote to the Council requesting a submission in respect of a number of questions relating to the allegations raised by the complainant. The questions were focused on the factors that the Council took into account when it decided to refuse the complainant's requests for information.

20. The Council responded to the Commissioner's letter by providing, in addition to the answers to the questions, a chronological table of all the complainant's requests.
21. Further, the Council explained that the request of 22 August 2017 (topographical plan for Millstone Lane) was submitted on the basis that the same information had not been provided in response to two earlier requests for that information. The Council disagreed and explained that the previous requests were responded to and the complainant was provided with the information requested accordingly. In support of this assertion, the Council provided copies of its responses, with relevant attachments.
22. In its submission, the Council states that it has received several requests from the complainant within a period of two months, to which it responded by providing the requested information in accordance with statutory deadlines. The Council explains that each response to a request generated a subsequent information request by the complainant followed by additional correspondence which quite often consisted in an expression of disagreement of the complainant with the Council's actions on various topics.
23. The Council asserts that transparency and accountability are leading principles in its engagement with the members of the public and it works extensively to comply with information requests. In addition, the Council explains that it chooses to apply section 14(1) of the FOIA in very rare circumstances and in the last 18 months it invoked section 14(1) to refuse to respond to information requests only on four occasions.
24. The Council considers that, judging from its experience, the complainant would remain dissatisfied with responses and would submit numerous follow up enquiries no matter what information was supplied.
25. When it decided to refuse to respond to the last two requests, the subject of this complaint, the Council took into account, amongst others:
 - 109 emails and complaints in relation to parking and enforcement issues sent to the Council by the complainant between 4 June and 24 August 2017;
 - 46 emails and complaints in relation to highway matters sent to the Council by the complainant between 16 June and 24 August 2017; and
 - 8 FOI requests received and processed between 2 June and 24 August 2017.

26. The Council maintains that the large number of contacts by the complainant has placed a strain on resources and is getting in the way of the Council delivering its services to citizens.
27. In support of its arguments the Council refers to previous First Tier Tribunal (Information Tribunal) cases *Leicester City Council v ICO & J C Seddon*² and *White v ICO*³, where the Tribunal held that large number of contacts from one persistent individual on a matter with no public interest to the general population amounted to an unnecessary burden and placed a disproportionate strain on resources of the public authority.

The complainant's position

28. The complainant considers that as a regular tax payer he is entitled to have access to the requested information, in order to learn more and understand the way the Council manages the public space in the area of his residence.
29. Furthermore, the complainant believes that the Council's decision to refuse to respond to his last two requests for information is done deliberately to conceal mismanagement by the Council's officials of maintaining the public space in some specific locations. In his opinion, this information is of a crucial importance for all members of the public, and particularly local residents.
30. In relation to the number of emails and complaints sent to the Council by him, the complainant maintains that those are only complaints and reports of parking offences and abuses of blue badges. He claims that this part of correspondence should not be considered to be related to the requests for information submitted by him.

The Commissioner's view

31. Firstly, the Commissioner would like to highlight that there are many different reasons why a request may be considered 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 judgment about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed vexatious, but equally, the request may be connected to others by a broad or narrow

² EA/2012/0189

http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i921/20130114%20Decision%20Rule%2040_%20EA20120189.pdf

³ EA/2015/0214

<http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1710/White%20v%20IC%20decision%2019%2001%202016.pdf>

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.

32. 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 providing 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 request

33. Having carefully reviewed the documents submitted by the complainant and the Council, the Commissioner has identified that of the eight requests, seven were responded to in full and all requested information was released. A common feature of all his requests are topics of management and maintenance of public spaces in general and parking spaces in particular.
34. Within these issues, the Commissioner recognises that the complainant holds various concerns about the way the relevant departments of the Council perform their duties. However, it is reasonable for the Commissioner to consider that these issues will have means of complaint or appeal available for them, such as from the relevant public authority or court. In situations where an individual disputes the decisions or actions of the public authority, the Commissioner recognises that the appropriate complaint or appeal process should be followed, and the purpose of the rights provided by the FOIA and EIR is not to supplant such processes, or else to be used to express dissatisfaction with the outcome of them.
35. It can be seen from the chronology of the requests (see Annex 1) that the complainant is exhibiting a degree of tenaciousness and persistence in making his requests, which supported his attempts to find fault in a decision which the Council has taken.
36. On the other hand, the Council has confirmed that it did not receive any other request by other members of the public in relation to the issues raised by the complainant, leading the Council to conclude that the complainant's requests address exclusively his own concerns and are not expression of concerns of the public at large.
37. Based on these factors, the Commissioner has concluded that there is limited public value inherent within the requests.

The burden upon the Council

38. Based on the submissions received by both parties, the Commissioner notes that extended correspondence has taken place between the parties prior to the request, which was further spurred by responses to previous requests submitted by the complainant.
39. It has become apparent that the Council has attempted to respond and provide the information requested by the complainant. However, a significant part of correspondence consists of the complainant disputing the way the Council manages different activities which the complainant understood upon receiving information.
40. Moreover, the Commissioner notes that some of the complainant's requests were considerably complex, such as request FOI 13815 which consisted of 10 questions and understandably that requires time and effort from the Council's relevant officials to respond.
41. As such, the Commissioner recognises that taking into account the wider pattern of requests and correspondence, compliance with these requests would only serve to increase the already significant burden upon the Council.

The public interest test

42. 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.

43. The Commissioner recognises that the requests relate to issues that are of concern to the complainant, and that some of these issues may have direct impact on the complainant's community. The disclosure of information may therefore allow the complainant to better understand the basis and the nature of those issues.
44. However, the Commissioner considers that to provide the amount of information requested by the complainant and respond to the subsequent enquiries made within a relatively short period of time, would impose a burden that would be disproportionate compared to the benefit that the general public would receive.
45. Moreover, the Commissioner sees no clear evidence to suggest that the Council has unfairly or incorrectly considered the matters raised by the complainant.

Conclusion

46. The Commissioner agrees with the Council that the complainant's requests have passed the point where a reasonable person would conclude they are vexatious and manifestly unreasonable. The Commissioner therefore finds that the Council has properly applied regulation 12(4)(b) of the EIR to the complainant's requests. She considers that complying with the complainant's requests would be unreasonably burdensome and an unwarranted use of the Council's resources.

Right of appeal

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

Website: 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

Alun Johnson
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex 1

50. The information requests submitted by the complainant to the council:

- i. **Ref. No. FOI 13662**, submitted on 2 June 2017 requested information regarding the permits granted to charitable organisations for street collection. The Council responded on 29 June 2017 providing all the information requested.
- ii. **Ref. No. FOI 13726**, submitted on 13 June 2017 requested information regarding parking fines issued in two specific locations for two calendar years, with detailed specifications. The Council responded on 12 July 2017 providing all the information requested.
- iii. **Ref. No. FOI 13815**, submitted on 20 June 2017 contained 10 questions related to improvements in Millstone Lane. The Council responded on 18 July 2017 providing all the information requested.
- iv. **Ref. No. FOI 13947**, submitted on 15 July 2017 contained a number of questions related to blue badges issued by the Council. The Council responded on 1 August 2017 providing all the information requested.
- v. **Ref. No. FOI 13978**, submitted on 17 July 2017 requested information regarding Millstone Lane. The Council responded on 2 August 2017 providing all the information requested.
- vi. **Ref. No. FOI 14038**, submitted on 26 July 2017 requested detailed information related to Jubilee Square. The Council responded on 21 August 2017 providing all the information requested.
- vii. **Ref. No. FOI 14110**, submitted on 3 August 2017 requested a topographical plan of a specific area of Millstone Lane. The Council responded on 21 August 2017 providing all the information requested.