

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

Date: 14 January 2019

Public Authority: Hampshire County Council
Address: The Castle
Winchester
Hampshire
SO23 8UJ

Decision (including any steps ordered)

1. The complainant requested information about a road sign placed at a certain location by the relevant department of Hampshire County Council (the Council). The Council refused to comply with this request on the grounds that it considered it to be manifestly unreasonable in accordance with Regulation 12(4)(b) of the EIR.
2. The Commissioner's decision is that the complainant's request was manifestly unreasonable under Regulation 12(4)(b) and therefore the Council was not required to comply with it.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 8 February 2018 the complainant requested from the Council information of the following description:

"At the junction of Crofton Lane with Sea Lane between Hill Head and Lee on the Solent, prominent traffic sign indicating that the national speed limit applies.

Any recorded information indicating why this sign was erected."

5. On 12 March 2018 the Council responded. It refused to comply with the request, stating that previously the complainant had submitted requests of the same nature and subject, thus it considered the request to be vexatious as per section 14 of the FOIA.
6. On 23 April 2018, the complainant requested the Council to conduct an internal review of its response.
7. The Council provided the complainant with the outcome of its internal review on 4 May 2018. It upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 17 March 2018 to complain about the way his request for information had been handled. The complainant claimed that the Council was wrong to rely on section 14 of the FOIA when it decided to declare the request vexatious.
9. Upon examining the documents included in the complainant's submission, the Commissioner noted that the subject matter of the information request is likely to fall under the definition of environmental information as per regulation 2(1) of the EIR. Therefore, she considered it appropriate to consider the case under the EIR access regime.
10. In light of this, the following analysis covers whether the Council handled the request in accordance with the EIR. Specifically, it will look at whether the Council is entitled to rely on regulation 12(4)(b) – (manifestly unreasonable) as a basis for refusing to provide the requested information.

Reasons for decision

Regulation 2 - Is the requested information environmental?

11. As explained above, the Council cited section 14(1) of the FOIA as a basis for refusing this request. However, during the course of her investigation, the Commissioner informed the Council that taking into

account the environmental implications of the present request, it should have been handled under the EIR provisions.

12. 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 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.

13. Regulation 2(1)(c) states that

"... 'environmental information' has the same meaning as in Article 2(1) of the Directive namely any information in written, visual, aural, electronic or any other material form on –

...

(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 in (a) and (b) as well as measure or activities to protect those elements;..."

14. The requested information relates to the determination of the speed limit on a road. The Commissioner's view is that this is information on a measure which may affect factors such as emissions. The Commissioner therefore considers that the requested information would be environmental in accordance with regulation 2(1)(c) and so the request should be dealt with under the terms of the EIR.

Regulation 12(4)(b) of the EIR – manifestly unreasonable

15. 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;

16. Regulation 12(4)(b) can be applied:

- when the request is vexatious; or
- when the cost of compliance with the request is too great.

17. In practice 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 EIR¹. Therefore, having found that the requested information would be environmental, the Commissioner has gone on to consider regulation 12(4)(b) as it is the equivalent provision under the EIR to section 14(1) under the FOIA.

18. The Commissioner has previously published guidance on vexatious requests². 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.
19. 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 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.

The context of the request

20. The Council explained that it has a long history dealing with requests from the complainant of a similar nature. In the period between September 2014 and April 2015 the complainant contacted the Council on numerous occasions challenging a decision of the Council on siting a specific speed limit on certain locations and subsequently requesting information related to the legal basis of that decision. The Council provided the complainant with the requested information.
21. Following that request, in May 2015 the complainant raised additional concerns in relation to the speed limit in a different location. This correspondence resulted with another information request submitted on 15 June 2015 asking for required qualifications to be employed in

¹ <https://ico.org.uk/media/for-organisations/documents/1615/manifestly-unreasonable-requests.pdf>

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

the Council's Transport and Environment Department. The Council also complied with this request.

22. On 29 January 2016, the complainant repeated his request of 8 April 2015, and stated that if the Council did not provide the requested information, he would submit an application for judicial review.
23. The Council responded to the complainant that it is a repeated request and that it was refusing the request under Section 14 of the FOIA.
24. The complainant raised the issue with the Local Government Ombudsperson (LGO) in 2015. The LGO issued a decision on 17 December 2015 refusing to investigate the complaint because it considered that *"the issue does not affect all or most people in the Council's area."*
25. In addition, the complainant applied for permission for judicial review to the High Court. This application was refused because the High Court stated that it considered it *"to be totally without merit"*.
26. On 26 September 2016 the complainant submitted another request to the Council, this time asking for a confirmation that the disputed speed limit sign will be removed.
27. The Council, relying on section 14(1) of the FOIA refused to comply with the request stating that *"Since April 2015 the County Council has received five requests for information relating to speed limits and signage near roundabouts. These requests are taking officers away from their core functions and are creating a burden on officer resources."* In the same letter, the Council warned the complainant that, whilst he was entitled to submit information requests as per his preferences, the Council would not comply with future requests relating to speed limit signage.

The Council's position

28. 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 request for information.
29. The Council considered that the complainant's request for information *"...is an improper use of a formal procedure and responding to it would result in a disproportionate and unjustifiable level of disruption, irritation, and distress"*.
30. The Council reached this conclusion based on the following reasons:

- The complainant raised repeated issues which have already been considered by the Council;
 - The complainant has ignored findings of other public authorities on the matters he continues to raise;
 - The complainant continues to challenge the Council for alleged wrongdoing, although he has been provided with evidence that the Council is complying with its legal obligations;
 - The complainant is pursuing a matter that is of personal interest rather than wider public value.
31. The Council maintains that it decided to refuse the request as vexatious based on previous experience of the complainant: "*A pattern of behaviour has become apparent whereby the provision of information leads to [name redacted] entering into further lengthy correspondence about the merits or otherwise of that speed limit, and related issues.*"
32. In support of its position, appended to its response to the Commissioner's letter, the Council provided the following documents:
- LGO's final decision letter – December 2015;
 - Order disposing of Judicial Review proceedings – October 2016;
 - The Council's letter declaring the complainant's requests vexatious – October 2016;
 - Information requests about Wallington Way, Fareham – 2017;
 - Letter to Lord Burns requesting changes to FOIA – October 2015;
 - Information requests and related correspondence about speed limits on the Avenue and West Street, Fareham – 2014-2016.
33. The Council stated that in coming to the decision to declare the request vexatious, it also took into account the public interest arguments in disclosing the information requested. The Council considers that such a disclosure would raise public awareness and further understanding of its functions as a Highways Authority. It would enable the public to be better informed on the issue and would further promote openness and transparency.
34. However, the Council considers that all the relevant information pertaining the present information request has either been provided to the complainant or is publicly available.

35. It is the Council's position that complying with the present request will result in a continuing correspondence which will cause an unreasonable diversion of resources from the provision of essential public services. Consequently, the Council considers disclosing the requested information would cause an excessive use of employee time resolving the follow up queries. In light of that, the Council considers that the public interest in refusing the request outweighs that in complying with it.

The complainant's position

36. The complainant claims that his information request "*in respect of the siting of two 40 mph signs are perfectly reasonable, and indeed are very much in the public interest.*" In addition, he maintains that the Council are wrong to declare his request vexatious and are required to provide him with a meaningful response in accordance with the FOIA.

The Commissioner's view

37. Firstly, the Commissioner notes 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 as vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates them.
38. The Commissioner's guidance emphasises 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

39. Having carefully reviewed the documents submitted by the complainant and the Council, the Commissioner has noted that the Council has constructively engaged in responding to the complainant's requests and subsequent queries. A common feature of most of the correspondence is the lawfulness of the speed limit signs that the Council has put in various locations.

40. Within these issues, the Commissioner recognises that the complainant holds different concerns about the appropriateness of the Council's decisions to put certain road signs at specific locations.
41. It can be observed from the chronology of the correspondence that the complainant is exhibiting a degree of tenaciousness and persistence in making his requests, which supported his attempts to find fault in decision taken by the Council.
42. On the other hand, there is no evidence that disputed speed limit signs have prompted objections by other members of the public, leading the Council to conclude that the complainant's requests address exclusively his own concerns and are not expression of concerns also held by others.
43. Based on the above factors, it is the Commissioner's view that there is limited public value inherent in the complainant's request.

Burden upon the Council

44. 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.
45. It is apparent to the Commissioner that previous requests on similar matters have already consumed significant public resources. It is recognised that compliance with the present request would place further burden on the Council, which would need to task officers with explaining the lawfulness of the decision-making on siting speed limit signs.
46. The Commissioner further recognises that responding to these requests would be highly likely to generate further requests and correspondence about the matter.

Conclusion

47. Having considered the limited public value of the requests, in conjunction with the burden on the Council's resources, the Commissioner has concluded that the request was vexatious and hence manifestly unreasonable. The exception provided by regulation 12(4)(b) was, therefore, engaged.

The public interest test

48. 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.

49. This means that, having found that the exception was engaged, the next step is for the Commissioner to consider the balance of the public interests.
50. 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.
51. The Commissioner has taken into account the general public interest in transparency and accountability. She is mindful of the presumption in favour of disclosure and the need to read exceptions restrictively. She has also taken into account the burden and distraction that would be imposed on the Council and the wider public interest in protecting the integrity of the EIR and ensuring that they are used responsibly.
52. However, in considering the Council's responses provided to the complainant previously and the correspondence that followed as a result, the Commissioner is not convinced that responding to this request will result with the complainant being satisfied.
53. The Commissioner is strongly of the opinion that public authorities should be able to concentrate their resources on dealing with legitimate requests rather than being distracted by requests that have little merit and where the wider public interest would not be served by the disclosure of information.
54. On balance the Commissioner finds that the public interest favours maintaining the exception as the burden imposed on the Council would be significant and the complainant's request would not fulfil any wider environmental issue. The Commissioner's conclusion is, therefore, that the public interest in the maintenance of the exception in this case outweighs the public interest in disclosing the information and so the Council was not obliged to comply with the complainant's information request.

Right of appeal

55. 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

56. 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.
57. 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

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