

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 14 April 2021

**Public Authority:** Cheshire West and Chester Council

**Address:** HQ Building  
58 Nicholas Street  
Chester  
CH1 2NP

#### **Decision (including any steps ordered)**

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1. The complainant has requested planning application and enforcement information about four specific properties. Cheshire West and Chester Council ("the Council") refused the request as manifestly unreasonable on vexatious grounds under regulation 12(4)(b).
2. The Commissioner's decision is that the Council is entitled to refuse the request under regulation 12(4)(b).
3. The Commissioner does not require the Council to take any steps.

## Request and response

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4. On 17 February 2020, the complainant wrote to the Council and requested information in the following terms:

*I will start from the beginning again, I require under foi details of 4 properties. [redacted address], [redacted address], [redacted address], and [redacted address], I would like details in relation to the planning applications and all the enforcement details on these four properties, not tiny bits and pieces fed in a drip like fashion, it feels like pulling teeth, you have making it so difficult. I still cannot draw a conclusion as to how you arrived at your decision not to pursue enforcement on both [redacted address] and [redacted address], I've had nothing on [redacted address] or [redacted address] enforcements, and would like details of the housing estate built next door to my property at [redacted address], starting with the demolition of a barn in 2009 re erecting a new portal frame building. Five times the size without planning and the retrospective manner in which it was allowed to stay put, then the subsequent building operations in green belt against all current guidelines, the council have a financial interest in this housing estate, I look forward to seeing the full process of the planning in all these what I believe relevant properties.*

5. The Council responded on 16 March 2020 under the reference of 'RFI 2297'. It refused to comply with the request under regulation 12(4)(b).
6. On 17 March 2020, the complainant wrote to the Council and asked for an internal review of its response.
7. The Council provided the outcome of its internal review on 5 June 2020. It maintained the application of regulation 12(4)(b).

## Scope of the case

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8. The complainant contacted the Commissioner on 24 June 2020 to complain about the way their request for information (given the reference of 'RFI 2297') had been handled by the Council.
9. The Commissioner therefore considers the scope of the case to be whether the Council is entitled to refuse the request under regulation 12(4)(b).

## Reasons for decision

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### Regulation 12(4)(b) – Manifestly unreasonable requests

10. Regulation 12(4)(b) 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 Freedom of Information Act 2000 (“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<sup>1</sup>. 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.
13. 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

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

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.

### The Council's position

14. The Council has explained that the complainant has been in extended contact with it since 2018; this contact has taken place through the Council's complaints process, direct communication with the Planning team, and information requests. The subject of this contact is the complainant's dissatisfaction with the Council's action in respect of specific planning permissions (of both the complainant and third parties), and – what the Commissioner understands to be – the Council's decision not to take enforcement action in respect of specific sites.
15. The Council has explained that it has previously responded to several information requests by the complainant, including that on 13 February 2019 and 14 March 2019 (which were given the reference of 'RFI 0728').
16. The Council has advised that it placed the complainant into managed contact on 8 March 2019, to organise the various correspondence submitted by the complainant to specific officers, and further, to protect staff from offensive language, unsubstantiated allegations, and verbal abuse. The Council has provided the Commissioner with a copy of the recorded business case for its decision to take this action, and has referred the Commissioner to what it considers to be abusive comments made by the complainant to officers in emails dated 23 November 2018, 28 November 2018, 6 December 2018, 20 December 2018 and 21 December 2018.
17. The Council considers that, due to having exhausted the Council's complaints process, and having been restricted in his contact with officers, the complainant has since sought to look for other avenues to pursue his dissatisfaction directly with the Council. This has included making serious and unsubstantiated allegations against officers within the Planning Team.
18. In relation to the complainant's concerns, the Council has referred him to his ability to escalate matters to the relevant public authorities, such as the police, the Planning Inspectorate, and the Local Government and Social Care Ombudsman.

### The Commissioner's analysis

19. 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.
20. 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 request*

21. The Commissioner recognises that the complainant is clearly dissatisfied with the Council's actions under planning law and seeks information in relation to this. However, it is understood that the complainant has exhausted the Council's planning complaints process and has been referred to the appropriate bodies to raise his concerns further should he wish to do this.
22. In scenarios such as this, the Commissioner will also, if considered relevant, consider a public authority's handling of any previous information requests. This is because if the authority has handled any previous requests poorly, any subsequent request on the same topic may be interpreted as a reasonable action on the part of the requestor.
23. In the circumstances of this case, the Commissioner understands - from the complainant's submissions - that he has made a preceding request to the Council, which was given the reference of 'RFI 1715'. That request was made on 27 September 2019, and following the Council asking the complainant to provide clarification, a response was issued by the Council which disclosed information. Following an internal review, the Council also disclosed further information that it had initially withheld under an exemption.

24. Having considered this context it is evident that the Council has handled the preceding request under the EIR, and further, has disclosed held information. The complainant has not submitted any clear complaint to the Commissioner about this previous request, and there is no indication that the Council has handled it poorly; on this basis the Commissioner does not consider that it reduces the strength of the Council's argument that the request under consideration is vexatious.
25. The Commissioner is also aware - from the Council's submissions - that the complainant submitted several related requests in February and March 2019, to which the Council issued a response under the reference 'RFI 0728' and informed the complainant of the right to appeal to the Commissioner. Again, the Commissioner is not aware of any related complaint being made to her about those requests, and there is no indication that the Council handled the requests poorly.
26. In these circumstances, it is reasonable for the Commissioner to conclude that the request has been made specifically to pursue matters that the Council considers to be closed, and to which proper routes of appeal are available to the complainant. There is also no evidence available that suggests that the Council has failed to handle the complainant's previous requests properly. These factors significantly reduce the value of the request.

*The burden upon the Council*

27. The Commissioner recognises that the request seeks a substantial amount of information, and that compliance would require the Council to expend significant public resources. In addition, the Commissioner understands that the Council has already responded to previous related requests and either disclosed information, or else referred the complainant to where he can publicly access it.
28. It is also reasonable for the Commissioner to consider that the current relationship between the complainant and the Council means that compliance with the request would likely generate further correspondence, placing further burden upon the Council's resources.

The public interest test

29. 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.*

*Public interest arguments for not maintaining the exception*

30. The Commissioner recognises that the request relates to concerns held by the complainant about the Council's handling of planning applications and enforcement matters. There is an inherent public interest in ensuring that the Council's handling of such matters - which may impact significantly upon the environment - are handled with appropriate transparency and accountability.
31. It is further recognised that the disclosure of related information can enable individuals to understand why a decision or action has been taken, and assist them in deciding whether they wish to challenge it. This in turn promotes democracy and public participation.

*Public interest arguments for maintaining the exception*

32. The Council has provided compelling arguments that the request is a continuation of previously answered information requests, and other correspondence to which it has provided responses. Compliance with this request, which is significantly wide in its parameters and seeks information that has already been the subject of previously uncontested requests, would divert the Council from its core functions and duties, and there is no evidence available to the Commissioner that indicates that this would resolve the matter to the complainant's satisfaction.
33. There is also no evidence available to the Commissioner that indicates that the Council has acted incorrectly in respect of planning matters, and it is recognised that there are appropriate routes of appeal should the complainant remain dissatisfied with the Council's final position in respect of his complaints.

*Balance of the public interest test*

34. The Commissioner recognises the inherent importance of accountability and transparency in decision-making within public authorities, and the necessity of a public authority bearing some burden when complying with a request for information.
35. However, in this case the Commissioner recognises that the request relates to a long running dispute that the Council considers to be closed, and the evidence suggests that the complainant is attempting to use the EIR to force continued engagement on the matter. There is no indication that the Council has acted improperly, and it is reasonable for the Commissioner to consider that compliance with the request - which would divert public resources - would be unlikely to resolve the complainant's concerns or progress the matter in any meaningful way.

36. Having considered the relevant factors in this case, the Commissioner has concluded that the public interest favours the maintenance of the exception.



## Right of appeal

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37. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

38. 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.
39. 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**  
**Head of FoI Casework and Appeals**  
**Information Commissioner's Office**  
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