

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

### **Decision notice**

**Date:** 22 August 2022

**Public Authority:** Bristol City Council  
**Address:** The Council House  
College Green  
Bristol  
BS1 5TR

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

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1. The complainant requested correspondence and other notes taken on meetings or calls between officers at the council and any officers or governors of Cotham School. The council refused the request on the basis of Regulation 12(4)(b) (manifestly unreasonable request).
2. The Commissioner's decision is that the council was not correct to apply Regulation 12(4)(b) to refuse to respond to the request further. The Commissioner has also decided that the council did not comply with the requirements of Regulation 5(2).
3. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
  - To respond to the request again, without relying upon Regulation 12(4)(b).
4. The council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

## **Request and response**

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5. On 8 March 2021, the complainant wrote to Bristol City Council ("the council") and requested information in the following terms:

"Please disclose all correspondence and notes of calls or meetings between a) [name of officer redacted by the ICO] and b) [name of officer redacted by the ICO], [name of officer redacted by the ICO] or any other member of staff or governor of Cotham School from 1 January 2018 to date."
6. The council responded on 5 July 2021. It refused the request on the basis that section 14 of FOIA applied (vexatious request).
7. Following an internal review, the council wrote to the complainant on 3 August 2021. It amended its response to state that Regulation 12(4)(b) of the EIR applied (manifestly unreasonable requests).

## **Scope of the case**

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8. The complainant contacted the Commissioner on 2 September 2021 to complain about the way their request for information had been handled.
9. The complainant considers that the council is not correct to refuse the request on the grounds it is manifestly unreasonable. They also complained about the time which the council took to respond to the request for information.

## **Reasons for decision**

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### **Regulation 12(4)(b) – manifestly unreasonable request**

10. Regulation 12(4)(b) of the EIR provides that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable.
11. The Commissioner considers that a request can be manifestly unreasonable either if the request is vexatious, or where compliance with the request would incur a manifestly unreasonable burden on the public authority both in terms of costs and the diversion of resources.

12. In its submissions to the Commissioner, the council has relied upon the former interpretation of Regulation 12(4)(b); that it considers the request to be vexatious.
13. The Commissioner's guidance on regulation 12(4)(b)<sup>1</sup> states that public authorities should refer to his guidance on vexatious requests under section 14 of FOIA when considering whether a request for environmental information is manifestly unreasonable on the grounds that it is vexatious.
14. In his published guidance on dealing with vexatious requests<sup>2</sup>, the Commissioner considers the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
15. In that respect, his guidance advises public authorities that:

"A useful starting point is to assess the value or purpose of the request before you look at the impact handling the request would have on you".
16. The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal in the leading case on section 14(1), *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (ACC), (28 January 2013).
17. In the *Dransfield* case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues:
  - (1) the burden imposed by the request (on the public authority and its staff);
  - (2) the motive of the requester;
  - (3) the value or serious purpose of the request; and,
  - (4) harassment or distress of and to staff.

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

<sup>2</sup> <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/dealing-with-vexatious-requests-section-14/>

18. The Upper Tribunal did, however, caution that these considerations were not meant to be exhaustive. It emphasised that:

“...all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA” (paragraph 82).

19. Where Regulation 12(4)(b) is engaged, Regulation 12(1)(b) requires that a public interest test is carried out to determine whether the information should be disclosed even though the exception is engaged.

The council's position

20. The council argues that although this individual request would not create a disproportionate burden, it follows on from a long line of requests which it has received from members of a group called We Love Stoke Lodge (WLSL), which is a group dedicated to keeping Stoke Lodge Playing Fields as an open space for use by the community. The group is campaigning to have a fence which was erected by Cotham School, around Stoke Lodge Playing fields removed.
21. The issue of the fence is a long running issue within the community. The council said that whilst it is not directly involved in the discussions, as this relates to the school and the group, as the landlord it has become involved with many requests for information relating to the issues raised by it.
22. The complainant highlighted that the council is also the Commons Registration Authority for the area, and so it is involved with an application for the playing fields to be become registered as a Town or Village Green. This is not the first such application of this nature relating to this site.
23. The council argues that it has received a high number of requests from members of the WLSL group, and that it has therefore inferred that one of the purposes of the continual submission of high volumes of information requests by members of the WLSL is to disrupt the council to an extent that it takes a position against the school.
24. It said that when the complainant's request is aggregated with the other requests it has received from this group, then the burden upon the council in responding to them as a whole is disproportionate to the value of the information which would be disclosed. It noted that many requests overlap, or ask for the same information, and that this, seen in totality, has placed a disproportionate burden on the council's resources and has had a negative impact on its officers welfare.

25. It said that the council has therefore made a decision that any future requests from the group relating to the Stoke Lodge Playing Fields will be deemed to be vexatious on these grounds.
26. In evidence of its arguments, it provided the Commissioner with a list of requests which it had received regarding Stoke Lodge Playing Fields, demonstrating the large amount of requests, together with an overview of the nature of the requests.

The complainant's position

27. The complainant argues that she has not made any EIR requests for information previously. The council has shown that the complainant has made complaints about various aspects of the situation, but it has not said that she has made other requests for information.
28. The complainant clarified that the request relates to correspondence between a member of the council acting in its capacity as the Commons Registration Authority, ('the CRA') and the school in terms of their objection to an application to have an area of the land registered as a town or village green under the Commons Act 2016.
29. The complainant alleges that her request resulted from a situation where:

"in the course of the legal process, the CRA had revealed one instance of contact between [officer's name redacted] (on behalf of the CRA) and an individual from Cotham School, that had not otherwise been shared with the parties. My aim was to ascertain whether there were other communications that had not been shared, especially since it was the CRA itself that set a rule that every party should be copied on all correspondence in order that there should be full transparency in communications between all parties. The possibility that the CRA may have broken its own rule on transparency in communications is not a valid ground for claiming that my request is vexatious."
30. In the request for internal review, the complainant clarified to the council that the purpose of the request was to "asses the extent to which procedural irregularity has been observed in the course of the council's dealings with a matter of significant public interest".
31. The complainant also argued that it is not in her interests to seek to disrupt the work of the council, and that that is not the intention behind making the request for information.

32. The complainant further argues that the request relates to the important matter of access to public space, and it is not the case that all requesters are acting in concert or that they acting as part of a single campaign. The complainant does not consider that there is any campaign directed at disrupting the work of the council.
33. The complainant pointed out to the council that the Commissioner's guidance clearly states that 'it is also important to bear in mind that sometimes a large number of individuals will independently ask for information on the same subject because an issue is of media or local interest. Public authorities should therefore ensure that they have ruled this explanation out before arriving at the conclusion that the requestors are acting in concert or as part of a campaign'<sup>3</sup>.
34. In the request for review the complainant pointed out to the council that requests have been made relating to the playing fields by the Bristol Tree Forum, members of the WLSL, members of the press, representatives of Cotham School and by other persons who the complainant does not know. The complainant argues that all of these individuals are clearly not acting as part of a single campaign against the council over this issue.

#### The Commissioner's analysis

35. In its response to the Commissioner the council said that it has reached a decision that the council should refuse all current and future information requests relating to Stoke Lodge Playing Fields on the basis that the requests are manifestly unreasonable, provided that they are reasonably considered to form part of the campaign being run by the WLSL.
36. The Commissioner notes the complainant's argument that the requests received by the council will have come from many, disparate, sources, and that they cannot all be considered to be acting as a campaign. Whilst that is the case, the council has specifically identified the WLSL group in its arguments, and has said that it will apply the exception to requests from this specific group.

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<sup>3</sup> <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/dealing-with-vexatious-requests-section-14/are-requests-made-as-part-of-a-campaign-vexatious/>

37. The Commissioner has concerns that the council is seeking to apply a blanket approach to requests received about Stoke Lodge Playing Fields from the group. The issues raised are of public importance, both from the view of public access to formerly open public space, but also from a point of protecting the land and landscape within and around the site. There are also health and safety aspects relating to the use of the land.
38. The Commissioner accepts the council's argument that WLSL may be acting to support a position where the school should remove the fence surrounding the land. However, the council has not sufficiently justified its position to infer that the group is acting in concert in terms of making information access requests with a view to deliberately harassing the council into changing its position. The Commissioner also does not accept that the receipt of such requests would have the affect of causing distress to council officers, but he accepts they may be irritated by the number of requests received overall relating to the site, particularly if the same issues arises within those requests.
39. The Commissioner notes that the council acts in various capacities regarding land management. These range from its role as the local planning authority, its CRA role, its role as a landlord, including health and safety matters, and its role in administering and protecting trees subject to TPOs. These functions will all, separately, lead to it receiving correspondence, complaints, questions and information requests from members of the public, from interested parties and from lobby groups.
40. The council has a role as regards all of these functions in relation to Stoke Lodge Playing Fields.
41. Each will therefore generate correspondence and requests from interested parties. The Commissioner recognises that as the members of the WLSL are all individuals who have expressed an interest in the protection of this site, it is more likely that a higher proportion of its members will raise concerns and make requests relating to the site, either as individuals or as a group, than other members of the public. The Commissioner does not consider that, in this case, this equates to a decision that this this group is acting in concert with a view to disrupting the council's work or causing it harassment, annoyance or distress. There are a number of reasons why the members of the group may make such requests. Members of the public are allowed access to the site at specific times, and as individuals who have expressed an interest in the site, they may raise concerns about issues they have noticed where the public, or the site itself, are impacted by changes made by the school.

42. When considering the list of requests provided in evidence by the council it is apparent that these have been received from many different parties beyond the WLSL, and each had differing motivations when making their requests. The overall motivation behind the request may be concerns relating to the fencing off, and the use of the land, however the issues which this gives rise to are multiple.
43. The Commissioner notes that as a park containing many trees subject to tree protection orders, the fencing off of the area, and work carried out to do the fencing off, will raise concerns by parties interested in ensuring the protection of the trees and wildlife within the area. The Commissioner notes, for instance, that Bristol Tree Forum's concerns relate to the protection of mature trees within, and directly outside of the fenced off area, the legal requirements for carrying out work in and around TPO protected trees, and the protection awarded the trees now that the school fence has encompassed the land<sup>4</sup>.
44. Some of the requests and complaints which were highlighted by the council relate to the perimeter of the fenced off area. Others raise issues relating to how the perimeter work is carried out, health and safety issues, the use of CCTV on the grounds and the protection of trees. There are also planning concerns expressed about proposed work on a pavilion, and more generally, relating to locked gates and access to the land.
45. The Commissioner is therefore satisfied that an issue such as this is likely to raise concerns which many parties may decide to make requests over. As such, the council is likely to receive a large number of requests from parties interested in its actions in the various different capacities in which it acts.
46. The complainant's request relates to the issue of the village green application, and whether the administrative process is being undertaken as agreed between the parties involved.
47. The application to the Commons Registration Authority, and the council's objection to this, are likely to generate correspondence, questions and requests. It raises issues of importance as regards open access to the land, which the school currently restricts.

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<sup>4</sup> <https://bristoltreeforum.org/2019/12/10/council-no-longer-manages-trees-on-educational-sites/>



48. If the complainant's allegations are correct regarding a potential failure to abide by the transparency agreement relating to the Town or Village Common application, there is a strong purpose and value behind the request in ensuring that the process is undertaken within the agreed parameters, and carried out fairly.
49. Other issues involve the protection of access to open space, the protection of the environment within, and surrounding the area concerned, as well as concerns that the council has acted appropriately in allowing the fencing to be erected, and in its oversight of the protection of the land under the school's governance.
50. The Commissioner recognises a high degree of value in these issues in regard to the protection of the environment in and around the site.

The Commissioner's conclusions

51. The council said that responding to the complainant's request on its own would not cause it a significant burden. Its argument is that the overall effect of responding to the requests from the WLSL as a group would cause it a significant burden.
52. The Commissioner has not, however, been persuaded by the council's argument that the WLSL are acting as part of a campaign with a view to disrupt or harass the council until it changes its position.
53. The council acts in various capacities. It has functions in relation to land management, its role as a landlord and associated health and safety issues, the protection of trees, and its role as the CRA and the local planning authority. All of these different functions arise in relation to this Stoke Lodge Playing Fields. The overall number of requests and complaints which it has received must therefore be seen in this context.
54. It is understandable that members of a group, or groups which seek to protect Stoke Lodge, and public access to the site, may have various reasons to contact the council acting in its different capacities. Those reasons will often have a value and purpose which outweigh the council's generalised reasons for refusing the request.
55. The Commissioner also does not consider that the effect of receiving the requests would be a significant burden upon an authority the size of the council when compared to the value and purpose behind the requests for information.

56. The Commissioner therefore considers that the complainant's request was not manifestly unreasonable and so the council was not correct to apply Regulation 12(4)(b) to refuse the request in this instance.
57. The Commissioner therefore requires the council to respond to the request again, without relying upon Regulation 12(4)(b) to refuse the request.

**Regulation 5(2)**

58. The complainant made the request for information on 8 March 2021. The council did not provide its response until 5 July 2021. This falls outside of the 20 working days to respond required by Regulation 5(2).
59. The Commissioner has therefore decided that the council did not comply with the requirements of Regulation 5(2).

## Right of appeal

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60. 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: 0203 936 8963  
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)

61. 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.

62. 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 .....**

**Ian Walley**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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