

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

### **Decision notice**

**Date:** 30 November 2022

**Public Authority:** Hampshire County Council  
**Address:** The Castle  
Winchester  
Hampshire  
SO23 BUJ

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

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1. The complainant has requested information with regards to a specific road. The Council refused the request under regulation 12(4)(b) of the EIR – Manifestly Unreasonable.
2. The Commissioner's decision is that the Council is able to rely on regulation 12(4)(b) of the EIR to refuse the request.
3. The Commissioner does not require any steps.

## Request and response

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4. On 11 November 2021 the complainant made an 11 part request to the Council with regards to a specific road and a dispute over signage and that it is not a cul-de-sac.
5. The Council responded on the 8 December refusing the request under section 14(1) of the Freedom of Information Act 2000 (the FOIA) as it considered the request was vexatious.
6. The Council carried out an internal review on 1 April 2022, upholding that the request was vexatious, but advised that it should have dealt with the request under the EIR. It amended its response to refuse the request under regulation 12(4)(b) of the EIR – manifestly unreasonable.

## Scope of the case

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7. The complainant wrote to the Commissioner on 5 May 2022 to complain that their request has been refused.
8. The scope of the case is for the Commissioner to determine whether regulation 12(4)(b) of the EIR is engaged.

## Reasons for decision

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### Regulation 12 (4)(b) of the EIR – Manifestly Unreasonable

9. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose environmental information to the extent that the request for information is manifestly unreasonable. There is no definition of 'manifestly unreasonable' under the EIR, but the Commissioner's opinion is that 'manifestly' implies that a request should be obviously or clearly unreasonable for a public authority to respond to in any other way than applying this exception. The Commissioner has published guidance<sup>1</sup> on regulation 12(4)(b)

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

10. The Commissioner recognises that, on occasion, there is 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 vexatious.
11. The term 'vexatious' is not defined in the legislation. In *Information Commissioner vs Devon County Council and Dransfield*<sup>2</sup> the Upper Tribunal took the view that the ordinary dictionary definition of the word is only of limited use, because the question of whether a request is vexatious ultimately depends upon the circumstances surrounding that request. The Tribunal concluded that 'vexatious' could be defined as "...manifestly unjustified, inappropriate or improper use of a formal procedure" (paragraph 27). This clearly established that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.
12. In the *Dransfield* case, the Upper Tribunal stressed the  
"importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not. Emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).
13. In this case the Council has told the Commissioner that it has handled four information requests from the complainant all relating to the same subject. These requests were made on 4 May 2021, 29 September 2021, 26 October 2021 and this request of 11 November 2021.
14. The Commissioner is aware that the complainant has been through the Council's three stage complaint procedure, between April and August 2021, on the matters relating to her request. The complaints were not upheld.
15. The Council also received the following finding from the Local Government and Social Care Ombudsman (the LGSCO) on 18 May 2022, which stated:

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<sup>2</sup> <https://www.gov.uk/administrative-appeals-tribunal-decisions/dransfield-v-information-commissioner-section-50-jurisdiction-2020-ukut-346-aac>

"We will not investigate this complaint about the Council's decision not to implement additional highway markings... There is insufficient evidence of fault which would warrant an investigation."

16. The Council has also provided the Commissioner with a copy of 6 month contact restriction it issued on the complainant on 5 October 2021, implemented for the following reasons:
  - Refusal to co-operate with the appropriate process while still requesting a resolution.
  - Refusal to accept that issues are not within the remit of the complaints policy or relevant procedure despite having been provided with information about the scope of the policy or procedure.
  - Raising many detailed but unimportant questions, and insisting they are all answered.
  - Refusal to accept the outcome of a process after its conclusion, repeatedly arguing the point, complaining about the outcome, and/or denying that an adequate response has been given.
17. The Council has advised the Commissioner that the 6 month contact restriction was re-issued on 10 December 2021.
18. It is clear to the Commissioner that the complainant has a strong view on the matters relating to the subject of her complaint and appreciates that the road in question is where she lives.
19. However the Commissioner has to balance this with the overall burden that is being placed on Council resources to deal with this matter. There has been a 3 stage complaint process and a complaint to the LGSCO to which the complaints were not upheld. The complainant was also placed on restricted contact by the council due to the contact it was receiving.
20. Having considered the past requests, the Commissioner is also of the view that the complainant would not be satisfied with the response received from the Council, if it were to respond to this request, and further requests would most likely be submitted, placing further disproportionate burden on it in having to deal with this matter.
21. In this case, the Commissioner is satisfied that the Council has demonstrated a disproportionate burden would be placed on it and its staff in having to deal with the request and therefore finds that regulation 12(4)(b) of the EIR is engaged.

## Right of appeal

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22. 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:

23. 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)

24. 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.

25. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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## Signed

**Daniel Perry**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**