

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

**Decision notice**

**Date:** 26 January 2012

**Public Authority:** New Forest National Park Authority  
**Address:** Lymington Town Hall  
Avenue Road  
Lymington  
Hampshire  
SO41 9ZG

**Decision (including any steps ordered)**

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1. The complainant requested information as to whether a particular named individual had had input into two letters that had been written to him by the New Forest National Park Authority (NPA). The NPA refused the request under regulation 12(4)(b) as "manifestly unreasonable".
2. The Commissioner's decision is that the NPA was correct to apply regulation 12(4)(b) to the request and that the public interest favours maintaining the exception in this instance.
3. The Commissioner requires no steps to be taken by the NPA.

**Request and response**

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4. On 4 April 2011, the complainant wrote to the NPA and requested information in the following terms:  
*"Did [named person] have any input into the letter which I was sent by [second named person] on 12 August and/or to the letter I was sent by [third named person] on 26 August 2010?"*
5. On 6 May 2011, the NPA refused his request as manifestly unreasonable under the EIR.

6. The complainant asked for an internal review to be carried out. The internal review on 23 June 2011 upheld the refusal on the grounds that the request was manifestly unreasonable.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 7 July 2011 to complain about the way his request for information had been handled.
8. On 11 November 2011 the NPA wrote to the Commissioner with its arguments as to why it had refused the requested information as manifestly unreasonable.
9. The Commissioner has considered whether the NPA was correct to treat the request as being manifestly unreasonable.

### **Reasons for decision**

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10. Regulation 12(4)(b) of the EIR explains that a public authority may refuse to disclose information in cases where a request is manifestly unreasonable. The Commissioner considers that a request for information is manifestly unreasonable under Regulation 12(4)(b) if it would be considered vexatious for the purposes of the FOIA.
11. When considering whether a request is vexatious or not the Commissioner will look at the circumstances of the case but will bear in mind guidelines under certain broad headings to enable him to reach his decision. These are the following:
  - a) Whether compliance would create a significant burden in terms of expense and distraction.
  - b) Whether the request is designed to cause disruption or annoyance.
  - c) Whether the request has the effect of harassing the public authority or its staff.
  - d) Whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable.
  - e) Whether the request has any serious purpose or value.
12. Not all of these factors need to be present in order for the Commissioner to find that the request is vexatious. The Commissioner has considered these factors in relation to this request in the order set out above.

### **Whether compliance would create a significant burden in terms of expense and distraction**

13. The Commissioner's Awareness Guidance on the subject of vexatious and repeated requests states that:

"You need to consider more than just the cost of compliance. You will also need to consider whether responding would divert or distract staff from their usual work."

14. The NPA argued that the complainant had generated:

*"...numerous items of general correspondence and planning queries, including letters, emails, phone calls to many different officers within the NPA, and visits to the NPA's headquarters. The NPA's Business Services section has logged some items of written correspondence over recent years, but this log is very far from exhaustive and does not include much of the general material on the planning files and emails to individual officers, nor does it include visits, meetings or phone calls. It also does not include correspondence before officers realised that it had become necessary to keep such a log, and staff do not now have the resources to complete it."*

15. The list currently amounts to 139 items received, though the Commissioner is mindful that only 4 of these are actually information requests. When the complainant was informed by email that the log had reached 132 items received by that stage, he responded by email on 9 October 2010 to say that the NPA's files would contain a lot more correspondence from him.
16. The complainant wrote to the Commissioner on 30 November 2011 to argue that the request could not have been refused on the grounds that it took up time or that it was repetitious. He provided further argument on 2 January 2012. Firstly, he disputed that he had made any visits to the office in person, though he had made phone calls. He contended that there was "*nothing notable*" about the volume of correspondence "*given [his] history of involvement with planning in the National Park*".
17. In this letter the complainant stresses that the request is only designed to elicit a "yes" or "no" answer and that this would have a "*negligible impact on resources*". He adds, however, that the answer is designed to help with his complaint to the Local Government Ombudsman.
18. Although the Commissioner acknowledges that the complainant has a professional interest in the work of the NPA, he is satisfied that the requests he has made do impose a significant burden in terms of expense and distraction and that they are "*...extremely likely to lead to*

*further correspondence, further requests and in all likelihood, complaints against individual officers..." (paragraph 34)<sup>1</sup>*

### **Whether the request is designed to cause disruption or annoyance**

19. The NPA has not offered any argument to support this view. Therefore, the Commissioner makes no finding as to whether this factor applies in this case.

### **Whether the request has the effect of harassing the public authority or its staff**

20. The Commissioner states in his Awareness Guidance on vexatious and repeated requests that:

*"The focus should be on the likely effect of the request (seen in context), not on the requester's intention. It is an objective test – a reasonable person must be likely to regard the request as harassing or distressing. Relevant factors under this heading could include the volume and frequency of correspondence, the use of hostile, abusive or offensive language, an unreasonable fixation on an individual member of staff, or mingling requests with accusations and complaints".*

21. The NPA explained that the complainant has been through the NPA's internal complaints procedure ten times in relation to different planning issues, a number of which were referred to the Local Government Ombudsman. He has also made 'confidential' complaints about particular members of staff, which he has requested should not be handled through the NPA's complaints procedure. The complainant has specifically complained about the conduct of all of the NPA's senior staff and individual planning and enforcement officers. Some of these complaints are multiple. This has resulted in the NPA being unable to find anybody at a sufficiently senior level that would be considered impartial to progress his complaints and correspondence. However, the NPA stressed that it does attempt to look at each request for information on its own merits.
22. The NPA has said that in view of the complainant's "*fixation on certain people*" and the type of accusations he has made about a number of individuals, including dishonesty and incompetence, together with his overall pattern of behaviour has the effect of harassing and distressing

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<sup>1</sup> Found at <http://www.informationtribunal.gov.uk/DBFiles/Decision/i61/betts.pdf>

staff. In his 2 January 2012 letter, the complainant questions this view by stating that distress could only arise if there had been "*irregularity*".

23. The Commissioner considers that the available evidence demonstrates that the requests can be objectively seen as harassing the NPA or causing distress to staff. The Commissioner considers that this particular request is vexatious in that it appears to be designed to prove a personal point, rather than ask for information. The Commissioner also accepts the NPA's view that the likelihood is that any response would not end this particular line of questioning, as the complainant seems to suggest, but would lead to further requests.

### **Whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable**

24. In his Awareness Guidance on vexatious and repeated requests the Commissioner recognises that obsessive requests are usually a very strong indication of vexatiousness. The guidance states that:

*"Relevant factors could include the volume and frequency of correspondence, requests for information the requester has already seen, or a clear intention to use the request to reopen issues that have already been debated and considered."*

25. The NPA argues that, although the request is not in itself obsessive, it continues a pattern of behaviour that is obsessive.
26. The complainant has argued that his records indicate that he has gone through the NPA's complaints procedure on three occasions. He has made eight other complaints which he describes as "*stalling*" at the hands of the named officer or due to the NPA considering him "*persistent*". He states that he has complained about the NPA on nine occasions to the Local Government Ombudsman and disputes the outcome or lack of outcome of those complaints. Each complaint was based on a "*discrete concern*" normally involving an individual's conduct. Additionally the complainant said that he had asked the county council to consider the named person's conduct on the basis that they were only working for the NPA under a service level agreement and actually employed by the council. This has apparently led to other issues with council staff.
27. The complainant's overall argument centres around two disputes. One of these disputes is beyond the Commissioner's remit to consider. The other concerns:

*"...the ever continuing failure of the Authority to deal with [his] queries as they should for any member of the public and practising planning professional, resorting to dismissive and unjustifiably obstructive*

*behaviour and preventing [him] from 'normalising' a situation which they themselves have caused."*

28. Having considered the arguments provided by the NPA and the complainant's arguments, the Commissioner considers that the NPA has provided evidence to demonstrate that the request is obsessive or manifestly unreasonable.

### **Whether the request has any serious purpose or value**

29. The NPA has said that there may well be serious purpose or value in the complainant's requests and has not offered any specific argument relating to whether this particular request has serious purpose or value. The NPA only offered the observation that serious purpose and value is unlikely to apply to all his requests.
30. The Commissioner understands that the complainant does have a professional interest in the work of the NPA and that part of that interest relates to planning control. He also acknowledges the complainant's view that he has only ever used the correct channels and that he considers it legitimate to voice concerns about individual officers and the way in which they conduct their public duties.
31. For this reason, the Commissioner is of the opinion that some of his previous requests do have a serious value or purpose. However this is not enough in itself to prevent this particular request from being vexatious.
32. The Commissioner has considered all of the facts of the case and is satisfied that the NPA has provided sufficient evidence to demonstrate that the request is manifestly unreasonable. He therefore considers that it was entitled to apply regulation 12(4)(b) to the request.
33. For the reasons set out above, the Commissioner's view is that the exception provided by regulation 12(4)(b) is engaged and he has therefore gone on to consider the public interest in disclosure as required by regulation 12(1)(b).

### **Public interest arguments in favour of disclosing the requested information**

34. The NPA provided generic arguments to the complainant around the issues of transparency, accountability and allowing the public to understand the decisions taken by the public authority. In its response to the Commissioner the NPA explained that it had carefully considered whether it could respond but concluded that this particular request is of a personal nature and that there is no public interest in complying with it.

### **Public interest arguments in favour of maintaining the exception**

35. The NPA argued that providing responses to the complainant's correspondence is "persistent and burdensome". It detailed the complainant's suggestions of wrong-doing by the NPA that have not been substantiated by the Local Government Ombudsman to date, though there is an outstanding complaint. It also highlighted the complainant's letter sent under the Judicial Review Pre-action Protocol which was subsequently taken no further. The complainant has stated that he was only acting as an advisor and the decision not to go to Judicial Review was not his decision to make. Responding to the complainant has, however, involved the significant expenditure of public resources resulting in what the NPA describes as "*no apparent purpose or benefit*".

### **Balance of the public interest arguments**

36. The Commissioner agrees with the NPA that this request is of a personal nature and that there are no strong arguments as to why the disclosure of this information would be in the public interest. He also accepts that any response to the request is likely to lead to further correspondence of a personal nature and that, consequently, the public interest favours treating this request as manifestly unreasonable.

## 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: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

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** .....

**Graham Smith**  
**Deputy Commissioner**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**