

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

**Decision notice**

**Date:** 10 February 2014

**Public Authority:** Wiltshire Council

**Address:** County Hall  
Bythesea Rd  
Trowbridge  
Wiltshire  
BA14 8JN

**Decision (including any steps ordered)**

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1. The complainant submitted two requests to Wiltshire Council (the Council) for information about 'Roundhouse Farm', a sand and gravel quarry. The first request was submitted in July 2012 and the second in January 2013. The Council initially responded to the request of July 2012. However, when processing the request of January 2013, the Council determined that both requests were manifestly unreasonable and thus were being refused on the basis of the exception provided by regulation 12(4)(b) of the EIR.
2. The Commissioner's decision is that the Council is not entitled to rely on regulation 12(4)(b) to refuse either request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
  - Issue a fresh response to the request of 28 January 2013 (Council's reference RFI 5019) without relying on 12(4)(b) of the EIR.<sup>1</sup>

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<sup>1</sup> Despite finding that regulation 12(4)(b) does not apply to the request of 23 July 2012 (Council reference RFI 4414) the Commissioner has not ordered the Council to issue a

4. The public authority 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 the Act and may be dealt with as a contempt of court.

## **Request and response**

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5. The complainant submitted the following request to the Council on 21 June 2012:

*'Please supply me by email with the following information which is likely to be recorded within databases maintained by Development Services in the Minerals and Waste Development Team. This request is only for that information which dates between 16th October 2008 and the present day.*

*1 Origin, date and contents of all reports compiled by Council employees following scheduled and unscheduled site visits to Roundhouse Farm, Marston Meysey (aka 'Maisey') which explain and/or describe what developments have occurred and any which explains and/or describes how the developments which have occurred on site compare to the Council's relevant development permission for Roundhouse.*

*2 Origin, date and contents of all recorded responses/discussions of the contents of any part of each report from within or without the Council.'*

6. Following an exchange of correspondence with the Council, the complainant clarified his request as follows on 23 July 2012:

*'1 Please provide all of the Council's monitoring evidence (recorded informally or by formal report) for the relevant Roundhouse Farm Mineral Development permissions from 16th October 2008 to date. The 'relevant' permissions referred to is*

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further response to this request. This because the Council has already provided information in response to this request and conducted an internal review in light of the complainant's view that not all of the requested information has been provided. Subject to the Council appealing this decision, the complainant is free, if he wishes, to make a further complaint to the Commissioner regarding RFI 4414 on the grounds that not all of the recorded information falling within the scope of that request has been disclosed.

*whichever permission was current on the date which the monitoring evidence was gathered. The Planning system is open and according to the Council's web-site the Minerals and Waste Development Team '...undertakes monitoring of sites to ensure working and restoration operations are carried out in accordance with the planning permission, including compliance with associated conditions...'*

*2 Please provide all recorded comments or discussions, internal or external, on (1) which may involve, on one side, any of*  
*(a) the Director (currently [name redacted]) to whom the Roundhouse Farm Site manager reports;*  
*(b) the Roundhouse Farm Site manager (currently [name redacted])*  
*(c) the Enforcement Officer (currently [name redacted])*  
*(d) the County Ecologist (currently [name redacted])*  
*(e) the Roundhouse Farm Site developer (currently Moreton C Cullimore (Gravels) Ltd)*

*In order to avoid delays ,errors and/or omissions associated with correlation of this information by an individual who may have incomplete access to any of the named individuals' correspondence or filed comments may I request that you make each of the named individuals in 2, with the exception of (e), responsible for providing their own information directly to you? It would also be useful if the end date for information was extended from the date of the original request (21st June 2012) to today's date viz 23rd July 2012. Please note that I have dropped my request fro [sic] information from the Rights of Way section which I hope makes this request easier.'*

7. The Council provided the complainant with information in response to his modified request, which had been given the reference RFI 4414, on 18, 19 and 23 October 2012.
8. The complainant contacted the Council on 24 October 2012 in order to express his concern that the following information had not been provided:

*(i) comments and discussions associated with the site meeting of 2 May 2012. (omitted from Response to (d))*  
*(ii) comments and discussions associated with paragraph 2, item 2 Planning Permission Checklist 23 February 2012, namely "Enquiries have revealed ..." (a) "...that the material was overburden (silty material/non-workable mineral) from the quarry workings..."*

*and (b) "...so should not cause any problems with drainage." (iii) any evidence gathered or comments made or discussions undertaken during the 9 month period between 19 May 2010 and 23 February 2011'.*

9. The Commissioner understands that over the following months, the complainant continued to express his concerns to the Council that he had not been provided with all of the information falling within the scope of the request of 23 July 2012.

10. In response, the Council informed him on 31 January 2013 that:

*'RFI 4414 has been completed and reviewed. I do not believe there is anything outstanding on this matter. You claim there are four specific documents missing but have not stated in your email what they are. Please explain clearly what information you believe is missing. I have already checked with specific officers as you requested. I use your wording when asking them to retrieve information so if they have misinterpreted your request you will need to explain more clearly.'*

11. The complainant responded on 5 February 2013 with some indication as to the information he considered he had not been supplied with in response to his request of 23 July 2012. In doing so, he referred to his email of 24 October 2012 which he had sent to the Council questioning the non-provision of some of the requested information.

12. The Council responded on 25 February 2013 and informed the complainant that:

*'With regard to your email of 24th October, it appears that a response was received by the service but not forwarded to you. I apologise for this oversight and attach the officers response. I have been assured by officers that they have supplied the information as you requested and I am therefore unable to take this matter further for you. If you remain dissatisfied you can contact the Information Commissioners Office'.*

13. In addition to the above correspondence, the complainant emailed the Council on 28 January 2013 and sought the following information. This additional request was subsequently logged as RFI 5019 by the Council:

*'all correspondence and/or information concerning Roundhouse Farm, Marston Meysey exchanged (i) between the Council and Moreton C Cullimore (Gravels) Ltd, its agent and its employees(sic) owners and (ii) between the Council and the various pats (sic) of the Cotswold Water Park organisation. This*

*would comprise all emails, phone conversations,(sic) letters and meeting minutes or references to them in third party correspondence which is not currently available on the Council's planning website.'*

14. The Council responded on 28 February 2013. It explained that it had decided to refuse request RFI 5019 on the basis of the regulation 12(4)(b) because it considered it to be vexatious and thus it was being refused on the basis that it was manifestly unreasonable. It also explained that it now considered request RFI 4414 to be manifestly unreasonable for the same reason.
15. The complainant contacted the Council on 24 April 2013 and asked for this decision to be reviewed.
16. The Council informed him of the outcome of the internal review on 30 May 2013. The review upheld the application of regulation 12(4)(b) to both requests.

### **Scope of the case**

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17. The complainant contacted the Commissioner 29 July 2013 to complain about the Council's decision to refuse both requests on the basis of regulation 12(4)(b) of the EIR. The complainant provided the Commissioner with submissions to support his view that neither request was vexatious and these submissions are referred to below.
18. The Commissioner has therefore considered whether the Council is entitled to rely on regulation 12(4)(b) to refuse these requests.
19. Before setting out his findings, there are two points which the Commissioner believes that it would be useful to clarify.
20. Firstly, a public authority is entitled, if it wishes, to seek to apply a new exception after it has completed the internal review of a request. This point is relevant because as noted above the Council initially provided information in response to request RFI 4414 after which the complainant argued that some of the requested information had not been provided. The Council informed him of the outcome of the internal review, on 31 January 2013, namely that no further information was held. At that stage the complainant was informed that he should contact the Commissioner if he disputed this position. However, on 28 February 2013 the Council amended its position in relation to RFI 4414 and sought to refuse it on the basis of regulation 12(4)(b).

21. Secondly, in considering the application of regulation 12(4)(b), a public authority can only take into account any evidence that it has concerning events or correspondence up to the time limit for responding to a request. In most cases this will obviously be within the 20 working days after the request has been received. In the circumstances of this case, this means that the Council can only take into account evidence which predates 21 August 2012 in relation to its decision to cite regulation 12(4)(b) to request RFI 4414 (i.e. 20 working days after the date that request was submitted). This is despite the fact that it did not seek to apply regulation 12(4)(b) to this request until 28 February 2013. Similarly, in relation to request RFI 5019, the Council can only take into account information which predates 26 February 2013, i.e. 20 working days after the request was submitted.

## **Reasons for decision**

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

22. This regulation of the EIR allows a public authority to refuse to comply with a request if it is deemed to be manifestly unreasonable. The factors that the Commissioner takes into account when determining whether a request is manifestly unreasonable are to a large degree the same factors which he would take into account in determining whether a request is vexatious (section 14) under FOIA. However, regulation 12(4)(b) is a qualified exception and therefore subject to the public interest test.
23. The Commissioner's guidance on section 14(1) of FOIA, and for the purposes of this case, regulation 12(4)(b), is to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.
24. This will usually involve weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request. This should be judged as objectively as possible; in other words, would a reasonable person think that the purpose and value are enough to justify the impact on the public authority. Where relevant, this will involve the need to take into account wider factors such as the background and history of the request.

## The Council's position

### *Background*

25. The Council explained that prior to 23 July 2012, ie the date of the first request, it had received extensive correspondence from the complainant concerning the development of the sand and gravel quarry at Roundhouse Farm, Marston Meysey to which both requests relate. Since the quarry opened in 2006, the complainant had been a regular commentator on the operation and development of the mineral workings, including the approach taking by both the developer and the planning authority to such matters. He had objected, at great length, to planning applications relating to both the quarry development and to applications for other development submitted by the developer in relation to their adjacent land holdings and buildings.
26. For example, in October 2009 the complainant questioned the response he had received to two complaints and argued for what he considered the benefits of the Council taking enforcement action against the site operator. In December 2009, the complainant queried the advice provided by officers to the Council's planning committee. In May 2010, the complainant queried the Council's decision making and in June 2010 alleged that the Council had committed a major oversight in its handling of a planning application. In March 2011, the complainant emailed the service area to set out how in his opinion the quarry should be better managed. In May 2012, the complainant contacted the Council with a list of alleged breaches, in addition to which each recipient of the email received a DVD holding documents referred to.

### *Detrimental impact*

27. The Council argued both of the requests that it refused were very broad in nature. Request RFI 4414 sought **all** the Council's monitoring evidence, including that sourced from third parties, relating to Roundhouse Farm. RFI 5019 sought **all** correspondence and/or information concerning Roundhouse Farm, compromising **all** emails, phone conversations, letters, meeting minutes or references to them in third party correspondence. The Council emphasised that as the quarry opened in 2006, the planning records relating to the site comprised a considerable body of evidence. In light of the broad nature of these requests the Council argued that responding to them would involve a considerable amount of time and effort across a number of staff. Indeed, given that it had, initially, decided to respond to RFI 4414 it estimated that this had involved significantly more than 18 hours work (the reasonable cost limit under section 12 of FOIA a public authority can refuse to fulfil a request). The Council argued that to attempt to resolve the complainant's concerns regarding RFI 4414 and to provide

the information sought by RFI 5019 would continue to divert staff from their core duties and would significantly impact on those staff and their ability to provide the full range of core services they are employed to deliver.

28. During the course of his investigation the Commissioner asked the Council to provide more a more specific estimate of the time taken to comply with each of the two requests. In response the Council explained that it does not generally keep records of the amount of time used to determine, locate and retrieve and extract the required information. If it envisaged a request would be over the reasonable cost limit it would normally produce an estimate and explain that in refusal letter. However, no such estimate was produced in relation to RFI 4414 because it did not seek to refuse this request at the outset.
29. Nevertheless, the relevant officers now estimated that they spent 18.5 hours responding to request RFI 4414 and as responding to RFI 5019 would involve reviewing the same documentation then complying with this request would involve another 18.5 hours work.
30. The Council emphasised that it was important to see these requests in the broader context of the background described above. That is to say, the complainant had a prolonged and repetitive dispute with the service area concerning Roundhouse Farm. In the Council's view, responding to these requests would have a significant impact upon those staff and their ability to provide the full range of core duties they are employed to deliver. The Council noted that only two requests had been submitted, but it argued that the complainant's pattern of behaviour in relation to previous correspondence on this matter suggested that these would lead to further requests, clarifications or representations.
31. As is detailed below, in his submissions to the Commissioner the complainant noted that the Council did not initially seek to refuse request RFI 4414 despite the apparently burdensome nature of the request. The Commissioner asked the Council to comment on this point.
32. In response the Council explained that it initially sought to accommodate the request because it appeared relatively straightforward asking as it did for reports compiled by Council employees following scheduled and unscheduled visits to Roundhouse Farm. The Council explained that in its capacity as Minerals Planning Authority it regularly undertakes site visits to quarries to monitor compliance with planning conditions. Providing copies of these reports did not present any difficulty and copies were subsequently provided.
33. However, the Council argued that the response then developed into a series of email exchanges and representations raising sets of questions



and expanding the request and/or particular points. In short, although the original request of request RFI 4414 would have appeared to be reasonable to respond to, it was the complainant's behaviour after the that request was submitted that led the Council to cite regulation 12(4)(b).

### *Limited value*

34. The Council argued that the two requests were of limited value for a number of reasons and in doing so highlighted a number of indicators contained in the Commissioner's guidance of possible vexatious requests which it considered to be met.
35. Firstly, it argued they represented an unreasonable persistence on the part of the complainant and evidence of attempts to repeat issues that had already been fully considered by the Council. That is to say, the complainant had raised concerns with the Council as to the operation of the quarry, these matters had been responded to by the Council, including providing assurance that matters had been properly monitored and that concerns had been noted and acted upon. It emphasised that it was important to remember proper channels for the complainant to raise concerns regarding the operation of Roundhouse Farm already existed and to attempt to pursue these matters via the EIR was inappropriate use of the access regime.
36. Secondly, the complainant continued to challenge the authority of the Council without any cogent basis for doing so. It noted that in considering his previous complaints regarding the operation of the quarry, the Council had found that these were either considered to be temporary, unfounded or of minimal concern whilst work continued on the site.
37. Thirdly, the Council argued that when it did respond to request RFI 4414 this had done nothing more than result in the complainant submitting a subsequent set of questions and expanding the remit of the request or arguing a point on enforcement. It argued that this demonstrated that the complainant was seeking to argue points of dispute rather than asking for new information.
38. Fourthly, the Council argued that the complainant's interest in the matter of minerals development had become a highly personalised one. The Council noted that he lived outside the local area and thus the quarry did not impact directly on his environment. Nevertheless, the Council noted that the complainant's level of interest in this matter had resulted in the former local Councillor being on record as stating that he considered the public interest would be better served by allowing the site operator to make due progress with its operations, including the

restoration scheme, rather than seeking to use all manner of vexatious reasons to frustrate them at every turn. The Council explained that the Councillor also considered it necessary to request that the complainant refrained from sending him emails regarding Roundhouse Farm and pointing out that there was a process in place to deal with residents' concerns (ie a local community liaison group). Furthermore, the Council explained that a representative of the local parish council with responsibility for commenting on mineral matters is also on record confirming that he refused to accept emails from the complainant.

### *Weighing exercise*

39. The Council argued that it was entitled to conclude that both requests were manifestly unreasonable given the limited value in the requests when balanced against the detrimental impact on the Council that complying with the requests would have.

### The complainant's position

40. In support of his position that neither request was manifestly unreasonable, the complainant made the following points:
41. The Council's response to RFI 4414 was incomplete and very late. It was because of these problems, created by the Council, that prolonged correspondence.
42. The complainant argued that correspondence that he had sent to the Council on this matter which did not include specific EIR requests had always been appropriate, proportionate and justified because it was in accordance with planning legislation. He noted that the Council did not now, and had not previously, considered him to be a persistent complainant in respect of non-EIR matters.
43. As previously indicated above, the complainant suggested that the Council's claims in the refusal notice and internal review that complying with the requests would exceed 18 hours work was not supported by any evidence; rather it was simply an opinion. In addition, he emphasised that there was no suggestion that RFI 4414 would exceed the limit when it was first submitted.
44. With regard to the Council's suggestion that he sought to argue particular points, repeat issues or alleges wrongdoing, he in fact was only seeking to pursue omissions in respect of information previously supplied.
45. Finally, he argued that matters to which this request related to were not trivial ones. Rather there was a strong public interest in this information being disclosed.

### The Commissioner's position

46. The Commissioner has considered separately whether regulation 12(4)(b) can be applied to each request. This is because, as explained above, a public authority can only take into account any evidence that it has concerning events or correspondence up to the time limit for responding to a request, ie 20 working days following the request. In this case, RFI 4414 was submitted on 23 July 2012 and RFI 5019 on 28 January 2013. The circumstances at the points where the application of regulation 12(4)(b) needs to be considered are some 6 months apart.
47. With regard RFI 4414, the Commissioner does not accept that this request is manifestly unreasonable. The Commissioner has reached this conclusion primarily because as the Council itself acknowledges, when it initially received this request, it did not consider complying with it would result in any particular difficulties. Although the estimated time actually incurred in responding to the request was not insignificant, ie 18.5 hours, the Council nevertheless responded to the request. As is clear from the Council's submissions, it was the complainant's response and behaviour subsequent to responding to RFI 4414 that led it to belatedly argue that the request was manifestly unreasonable. However, what it is equally clear from the Commissioner's comments above is that such behaviour – post-dating the request as it does – cannot be taken into account in arguing that the request was, at the point it was submitted, manifestly unreasonable.
48. Even taking into account the background and broader context – ie the complainant's contact with the Council prior to July 2012 – the Commissioner is still not persuaded that this request is manifestly unreasonable. The Commissioner acknowledges that this previous pattern of behaviour could be seen as indicating that an EIR request by this complainant on this topic had the potential to cause disproportionate or unjustified levels of disruption, irrational or distress. However, the Council presumably did not share this view given that it decided in July 2012 to process the request. In the Commissioner's view whilst the complainant's interactions with the Council prior to July 2012 cannot be ignored in determining whether RFI 4414 is manifestly unreasonable, in his view the relevance of this background - and the weight the Council now invites the Commissioner to place upon it to justify the application of regulation 12(4)(b) – is skewed by the complainant's actions subsequent to the request being submitted. In other words, the Council is seeking to argue that with the benefit of hindsight, the complainant's background actually pointed to RFI 4414 being manifestly unreasonable. Unfortunately for the Council such hindsight, ie the events which post-date RFI 4414, simply cannot be taken into account.

49. With regard to RFI 5019, and in light of his findings in relation to RFI 4414, in the Commissioner's opinion the key question that needs to be addressed is what changed in the intervening period between the two requests that could lead the Council to justifiably argued that the request of RFI 5019 was manifestly unreasonable?
50. In the Commissioner's opinion the application of regulation 12(4)(b) to RFI 5019 is more finely balanced. On the one hand he accepts that the complainant's correspondence in the period between the two requests was clearly quite detailed and frequent. The complainant did not chose to follow the advice of the public authority and make a complaint to the Commissioner in relation to RFI 4414 on the basis that he considered further recorded information to be held by the Council. Rather he continued to engage in further correspondence with the Council in order to attempt to identify apparent omissions which ultimately resulted in a request which became RFI 5019.
51. When aligned to the nature of the complainant's interactions with the Council on this issue prior to July 2012, the Commissioner accepts that there is greater justification for arguing that RFI 5019 was manifestly unreasonable. Moreover, in light of such background the Commissioner accepts that it is not implausible that if RFI 5019 was answered the complainant may well submit further related EIR requests to the Council which could place a further burden on the Council.
52. However, on the other hand, any requestor is entitled – initially at least – to query the level of information provided by a public authority by seeking an internal review of an initial response. Whilst the Commissioner accepts that the complainant's correspondence in which he seeks to do this is detailed, and goes beyond simply asking for and accepting the outcome of an internal review, he is persuaded that its intention was to assist the Council in locating what the complainant considered to be missing information. Furthermore, in submitting RFI 4414 the complainant sought access to both formal and informal reports regarding the site in question. Although he was satisfied that formal reports were disclosed to him he believed that informal reports – eg comments received from third parties external to the Council – had not been provided. Therefore, he submitted RFI 5109 which, by asking for copies of correspondence between the Council and third parties, attempted to capture what he considered to be the information omitted from the Council's response to the earlier request. Whilst the complainant could have alternatively submitted a section 50 complaint to the Commissioner regarding RFI 4414 rather than submitting RFI 5019, in this context the Commissioner does not believe that the later request could necessarily be described as manifestly unreasonable.

53. Nor is the Commissioner persuaded that the background identified by the Council provides a sufficiently compelling basis to argue that RFI 5019 is manifestly unreasonable. The Commissioner acknowledges the Council's point that there are already existing proper channels by which the complainant can raise issues regarding the operation of Roundhouse Farm. However, the Commissioner does not accept, as the Council argues, that as result of these procedures an attempt to also pursue these matters via EIR by default is an inappropriate use of access regime. Rather, in the Commissioner's view it is a legitimate use of EIR (and indeed FOIA) for individuals to gather information in order to inform other interactions that may have with the Council. This is providing of course that such requests – and the consequence of such requests - do not result in placing a burden on the Council that exceeds the value of the requests themselves.
54. As noted above, the Commissioner accepts that the time it would take to respond to RFI 5019 - some 18.5 hours work - is a not an insignificant amount of work. However, in the Commissioner's view it is also important to remember that this is only the complainant's second EIR request and the previous one he submitted was some 6 months previously. Although the request resulted in a similar level of work having to be undertaken by the Council, in the Commissioner's view undertaking 18.5 hours of work to answer each request submitted some 6 months apart is not necessarily an excessive burden to place on a public authority. Therefore, although the Commissioner would agree that value of this request is arguably quite limited, he does not believe that there is sufficient justification to support a decision that RFI 5019 is manifestly unreasonable.
55. The Commissioner accepts that if the complainant continued to submit EIR requests about this topic with increasing frequency and/or which placed an additional burden on the Council it may well be case that such requests tip into being manifestly unreasonable. However, at this stage, despite the complainant's interactions with the Council prior to July 2012 and the limited value in the requests, the Commissioner is not prepared to accept that RFI 5019 submitted by the complainant some six months after his first EIR request - can be considered to be manifestly unreasonable.

## Right of appeal

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56. 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: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

57. 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.
58. 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 .....**

**Alexander Ganotis**  
**Group Manager – Complaints Resolution**  
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