

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

Decision notice

Date: 6 January 2014

Public Authority: North East Derbyshire District Council
Address: The Council House
Saltergate
Chesterfield
S40 1LF

Decision (including any steps ordered)

1. The complainant has requested information on the sale of land in Mickley, Derbyshire. The council sold the land for a fee, and it was subsequently sold on by the purchaser for a much higher fee a few months later. The complainant has requested details of the sale from the council and individual council officers and elected members over a long period of time. Having previously provided information to the complainant the council has stated to him on a number of occasions that no further information is held the council reiterated that no information is held but also applied section 14 (that the requests are vexatious) or to the extent that the EIR are applicable that Regulation 12(4)(b) is applicable (that the requests are manifestly unreasonable).
2. The Commissioner's decision is that North East Derbyshire District Council (the council) was correct to apply Regulation 12(4)(b) to the requests for information in this case.

Request and response

3. On 2 February 2013 the complainant had made a request for information on the price it had received for a land sale by the council in 2005. In that letter he asked the council to break down into component parts "*down to the last pound*" all aspects of the £120 000 figure to make up £200 000, less the £80 000 paid in cash. *He also asked for:*

"copies of all relevant documentation and to have made available electronic recording/data which relates to £200 000, "other value" and "plus some value out of other matters as part of the transaction making the receipt up to an estimated equivalent of £200 000"

I also wish to see any documentation in which Wulf Investments agree to any contributory factors above the £80 000 cash paid in order to cover the remaining figure i.e. "other value" of £200 000.

4. The council had initially responded to that request by stating that the figure comprised of the £80 000 cash which was paid, the cost of constructing a shop on the land of £90 000 which then totalled £170 000, plus a 10% notional increase to reflect regional house price inflation between the period when the council had accepted the offer and when the original purchaser then resold the land (April 2005 to October 2007). The council stated it had provided all of the information to him previously and said that the FOI request was closed.
5. On 27 August 2013 the complainant wrote to the council again and requested information in the following terms:

"Because of the lack of a rational explanation and due to the diversionary attempts to only supply constrained and limited viewpoints over this £200 000 figure; I now submit a public interest concern i.e. an EIR request for the provision that all documentation relating to this £200 000 be made available, 1) due to the land purchasers Wulf Investments only transferring £80 000 for the purchase of the Mickley Land and 2) due to the shop premises built by Wulf Investments (buildings etc) (not the land upon which the shop it sited) not being an asset of NEDDC in any way (apart from land ownership retention remaining with NEDDC)."

6. The council responded on 17 September 2013 stating that it had provided him with its response to this on 26 February 2013. It also stated however that it had previously found that the complainant was vexatious and as such it considered the enquiry closed.

Scope of the case

7. The complainant contacted the Commissioner on 25 September 2013 to complain about the way his request for information had been handled. He asked the Commissioner to consider the application of the exception and said that he considered that *"this action seriously hinders my enquiries into whether this land sale was properly conducted in order to benefit the public purse"*.

8. The Commissioner considers that the complainant's complaint is that the council was wrong to apply Regulation 12(4)(b) or section 14 of the FOI Act to his request.

Reasons for decision

9. The Commissioner has considered the information under the EIR. Both in his previous decision notices on this issue outlined in FS50436741 FS50436742, FS50436888, FS50440374 and in the First-tier Tribunal decisions EA/2013/0064 0065, 0066, 0067 complaints over this issue have been dealt with under the EIR.
10. Although the information relates to the financial transaction for the sale of land the figures ultimately takes into account the development of a shop on the land as part of the overall value received by the council for the land.
11. The Commissioner considers that the requested information is environmental information falling within the scope of the EIR.

Regulation 12(4)(b)

12. Regulation 12(4)(b) provides that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable. The Commissioner is clear that the inclusion of "manifestly" in regulation 12(4)(b) indicates Parliament's intention that, for information to be withheld under this exception, the information request must meet a more stringent test than being simply "unreasonable". "Manifestly" means that there must be an obvious or clear quality to the unreasonableness referred to.
13. The Commissioner is of the view that this regulation provides an exception to the duty to comply with a request for environmental information in two circumstances: 1) where it is vexatious, and 2) where it would incur unreasonable costs for the public authority or an unreasonable diversion of resources. However, that is not to say that the exception is limited to these two circumstances only, as the Tribunal in the case of *DBERR v ICO and Platform* (EA/2008/0096) emphasised:

"It is clearly not possible to identify all situations in which a request will be manifestly unreasonable" (paragraph 37); there may well be other situations where regulation 12(4)(b) can apply."
14. In this case the council suggest that Regulation 12(4)(b) should apply because the requests are vexatious. It has previously dealt with a large

number of requests from the complainant over the issue of the Mickley Land by the council over a number of Years.

15. The Commissioner and the Tribunal have considered complaints from the complainant regarding the application of Regulation 12(4)(b) to requests about the sale of this land by the council. Both found in favour of the councils application of the exception. The Commissioner's decision notice regarding the previous complaints can be found in his decision FS50436741 FS50436742, FS50436888, FS50440374 at http://www.ico.org.uk/~media/documents/decisionnotices/2013/fs_50436741.ashx and the Tribunals decision can be found in its decision in EA/2013/0064, 0065, 0066, 0067 which is available at [http://www.informationtribunal.gov.uk/DBFiles/Decision/i1098/Sturmer,%20Robert%20EA.2013.0064,%20065,%20066%20&%20067%20\(11.10.2013\).pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i1098/Sturmer,%20Robert%20EA.2013.0064,%20065,%20066%20&%20067%20(11.10.2013).pdf).
16. It is worth noting that the Tribunals decision upholding the Commissioner's earlier decision notices in FS50436741 FS50436742, FS50436888, FS50440374 came after the complainant's request for information on 27 August 2013.
17. A further Tribunal decision upholding an earlier complaint from the complainant is available at <http://www.informationtribunal.gov.uk/DBFiles/Decision/i890/20121123%20Decision%20EA20120052.pdf>.
18. It is important to note that section 14(1) can only be applied to the request itself, and not the individual who submits it. An authority cannot, therefore, refuse a request on the grounds that the requester himself is vexatious. Similarly, an authority cannot simply refuse a new request solely on the basis that it has classified previous requests from the same individual as vexatious.
19. In *Information Commissioner v Devon County Council & Dransfield [2012] UKUT 440 (AAC), (28 January 2013)* the Upper Tribunal took the view that the ordinary dictionary definition of the word vexatious is only of limited use, because the question of whether a request is vexatious ultimately depends upon the circumstances surrounding that request.
20. In further exploring the role played by circumstances, the Tribunal placed particular emphasis on the issue of whether the request has adequate or proper justification. They also cited two previous section decisions where the lack of proportionality in the requester's previous dealings with the authority was deemed to be a relevant consideration by the First Tier Tribunal.

21. After taking these factors into account, the Tribunal concluded that 'vexatious' could be defined as the "...*manifestly unjustified, inappropriate or improper use of a formal procedure.*' (paragraph 27).
22. The Tribunal's decision clearly establishes that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.
23. This being the case, the key question a public authority (and the Commissioner) must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
24. The Commissioner has considered the nature, the frequency and the disproportionate burden created by the complainant's previous requests over the sale of the land at Mickley in the decisions outlined above. He does not therefore intend to re-cover those same issues in this decision notice but has nevertheless taken these into account in this decision.
25. This is because the complainant's current request relates to the same issue of the land sale, albeit potentially with a different angle or sub-issue to previous requests to some degree. In all however they relate to the same issue of the land sale.
26. It is important to note that the council has said that it has provided all of the information which it holds about the land sale to the complainant and that his was accepted by the tribunal after its decision in case.
27. In the tribunal decision outlined above the tribunal considered the previous requests from the complainant and said:

"There is no evidence of wrong-doing and requests to the Council cannot bring forward information which the Council does not hold. Taking a broad view of these requests in their context it is clear that they can serve no proper purpose and are manifestly unreasonable."
28. The Tribunal concluded:

"It is clear that there is no serious purpose behind these requests. The processes of FOIA and EIR have gone as far as they can and they have disclosed nothing. There is no evidence to sustain [the complainant's] suspicions. The burden on the Council and its staff has been considerable, his attempts to get disciplinary action against officers is evidence of his unreasonable approach. No public interest is served by his requests. The Tribunal is satisfied that the ICO's decision notice is correct, the requests are manifestly unreasonable and dismisses the appeal."

29. The Commissioner notes that in spite of receiving the above decision the complainant contacted the Commissioner on 29 November 2013 asking him to expedite his decision. The complainant is adamant that his complaint, and presumably his investigations with the council, should be continued in spite of the tribunal decision.
30. The issues regarding this decision follow the same issues as were involved in those cases. The request is for information relating to the same land sale and follows a pattern wherein the complainant does not trust the responses (and the information) he has received from the council previously and seeks to demonstrate that the information he has received is incorrect by making further requests, allegations and complaints.
31. The Commissioner's decision is therefore that the council's decision to apply Regulation 12(4)(b) was correct in this case. He has therefore gone on to consider the public interest test required by Regulation 12. The test is whether the public interest in maintaining the exception outweighs the public interest in the information being disclosed. The Commissioner has taken into account the presumption of disclosure provided by Regulation 12(2).

The public interest test

32. The Commissioner has referred to the factors and consideration outlined in the previous public interest test which he carried out in case FS50436741. He has also taken into account the consideration of the Tribunal in its decision in EA/2013/0064, 0065, 0066, 0067. The factors considered in those cases remain relevant to this complaint.
33. Following the above the Commissioner's decision is that the public interest rests in the exception being maintained in this case.

Other matters

34. Although they do not form part of this decision notice the Commissioner wishes to highlight the following matters of concern.
35. Section 50(1) of the Act requires the Commissioner to make a decision in relation to complaints he receives about public authorities' compliance with the Act when dealing with requests for information. However, under section 50(2)(c) the Commissioner has the right to refuse to make a decision if it appears to him that a particular application is frivolous or vexatious.
36. As outlined in this decision notice, both the Commissioner and the First-tier Tribunal have upheld the council's decisions to deem requests of a similar nature from this complainant vexatious.
37. On 16 October 2013 the council wrote to the complainant outlining a series of requests it had received from the complainant over the period of June 2013 to October 2013. Some of these fall after the request in this case had been received (and the review had been carried out), and therefore they fall outside the period to be considered as part of this notice. Nevertheless they do, overall, demonstrate the continuation of a pattern of behaviour by the complainant which has now been recognised by both the Commissioner and Tribunal as being vexatious over this issue.
38. In view of the findings of this decision notice and that in the case of FS50436741 and the Tribunals decision in EA/2013/0064, 0065, 0066, 0067, the Commissioner considers that the complainant has sought to use requests for information and subsequent complaints to the Commissioner as a means of pursuing his grievance against the council.
39. The Commissioner believes this represents a pattern of vexatious behaviour. In future the Commissioner will consider whether it is appropriate for him to exercise his discretion under section 50(2)(c) to refuse to make a decision in relation to any complaint about a request of a similar nature from the complainant.

Right of appeal

40. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

41. 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.
42. 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
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