

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

**Date:** 16 January 2017

**Public Authority:** East Hampshire District Council  
**Address:** Penns Place  
Petersfield  
Hampshire  
GU31 4EX

**Decision (including any steps ordered)**

---

1. The complainant has submitted a number of requests for information to East Hampshire District Council. The information which the complainant seeks relates to a planning application concerning land at a particular location in Selborne.
2. The Commissioner's decision is that East Hampshire Distract Council has properly applied section 14(1) of the FOIA and Regulation 12(4)(b) of the EIR to the complainant's requests. The Council is therefore not obliged to comply with the complainant's requests.
3. No further action is required in this matter.

**Request and response**

---

4. This notice concerns 7 requests for information which the complainant has submitted to East Hampshire District Council. The complainant's requests are for recorded information made under the provisions of the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.
5. The requests made by the complainant are:

Request 1 – The complainant asked the Council to advise him whether... "there has been a new planning application, and, if so, has it been approved? This request is contained in an email dated 3 March 2016.

Request 2 – The complainant asked the Council to supply him with “a copy of Councillor Branch’s justification that was posted on the EHDC website regarding the District Valuer’s methodology and conclusion”. This request is made at point 2 of the complainant’s email to the Council on 28 April 2016 and is also contained in an email dated 11 April 2016.

Request 3 – The complainant asked the Council for “a copy of a Viability Report and the Council’s rebuttal dated 28 November 2014”. This request is contained in point 3 of his email to the Council dated 28 April 2016.

Request 4 – The complainant asked the Council for a copy of the ‘yellow sheets’ distributed prior to its meeting of 4 April 2015. This request is made at point 6 of his email to the Council dated 28 April 2016.

Request 5 – the complainant asked for a copy of two letters dated 14 August 2014 and 23 January 2015 which are referred to in the ‘yellow sheets’. This request was made at point 7 of his email to the Council dated 28 April 2016.

Request 6 – On 28 April 2016, the complainant asked the Council for a copy of the Council’s policy on ‘vexatious’ correspondence.

Request 7 – On 10 May 2016, the complainant asked for a copy of a written policy the Council might have on dealing with FOIA requests and the FOIA in general.

6. On 11 April 2016, the Council’s Executive Director advised the complainant that a decision had been made to treat his requests as vexatious, pursuant to the Council’s policy.
7. On 29 July 2016, following the Commissioner’s intervention, the Council provided the complainant with a formal response to his information requests. The Council provided the complainant with information in respect of request 1 and in respect of request 7, with a web address for its policy for dealing with requests made under the FOIA.
8. The Council determined that it was entitled to refuse the complainant’s requests numbered 2 to 6 in reliance on section 14(1) of the FOIA. The Council’s refusal notice stated that its decision had been made having taken into account the context and history of the requests and its previous contact with the complainant regarding his freedom of information requests.

## Scope of the case

---

9. The complainant contacted the Commissioner on 12 May 2016 to complain about the way his request for information had been handled.
10. The Commissioner has investigated whether the Council is entitled to rely on section 14(1) of the FOIA in respect of request 6 and on Regulation 12(4)(b) of the EIR in respect of requests 2 – 5.

## Reasons for decision

---

### Is the requested information “environmental information”?

11. Information is “environmental information” if it satisfies the definition set out in regulation 2 of the EIR and it must therefore be considered under the provisions of the EIR.
12. Regulation 2(1)(c), concerns any measures affecting, or be likely to affect, the elements referred to in 2(1)(a) or the factors referred to in 2(1)(b) will be environmental information. The requested information relates in part to a planning application<sup>1</sup>.
13. Planning applications and information associated with planning applications clearly concern measures that may affect environmental elements and/or factors. The Commissioner considers that it is appropriate to consider those parts of the complainant's requests where he is seeking environmental information under the terms of the EIR.
14. Where the complainant seeks non-environmental information, such as in request 6, the information falls to be considered under the Freedom of Information Act and therefore the Council's application of the exemption provided by section 14(1) is appropriate.

### Section 14(1) of the FOIA and Regulation 12(4)(b) of the EIR

15. Regulation 12(4)(b) of the EIR states that:

*For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that-*  
*(b) the request for information is manifestly unreasonable;*

---

1

<http://planningpublicaccess.southdowns.gov.uk/onlineapplications/applicationDetails.do?activeTab=documents&keyVal=MLG6J8TU03L00>

16. Section 14(1) of the FOIA states that:

Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

17. The Commissioner recognises that there are occasions where there may be no material difference between a request that is vexatious under section 14(1) of 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 as vexatious.

18. The Commissioner has published guidance on vexatious requests and for ease of reference, this can be accessed here:

<https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

19. The Commissioner's guidance makes clear that it is the request which must be vexatious, rather than the individual who has submitted it. In some circumstances it will be obvious when a request is vexatious; however there are circumstances where it is not. In such circumstances the request needs to be considered in terms of its effects on the public authority, particularly whether the request would be likely to cause a disproportionate or unjustified level of disruption, irritation or distress.

20. The impact of the request should then be considered against the purpose of the request and the value of the requested information to the public. A public authority is permitted to consider the context of the request and the history of its relationship with the requester when this is relevant.

21. Section 14(1) of the FOIA removes the duty to comply with a request. Regulation 12(4)(b) of the EIR on the other hand provides an exception and the application of this exception requires a public authority to apply a public interest test (in accordance with regulation 12) before deciding whether to the exception can be maintained.

22. The Commissioner accepts that factors such as proportionality and the value of the request, will have been considered by a public authority in deciding whether to engage the exception, and that a public authority is likely to be able to apply its considerations into the public interest test.

23. Regulation 12(2) of the EIR states that a public authority must apply a presumption in favour of disclosure. This means that the exception can only be maintained if the public interest in refusing the request outweighs the public interest in responding.

#### The Council's position

24. The Council has confirmed its reliance on the exemption/exception provided by section 14(1) of the FOIA and Regulation 12(4)(b) of the EIR.
25. It is the Council's position that the complainant's concerns about the alleged dangers to pedestrians posed by the planning approval for The Doone have been properly responded to and that details of the planning permission have been provided.
26. The Council considers that it has objectively reviewed the evidence it holds and its opinion is that that the complainant's requests justify its position that section 14 and Regulation 12(4)(b) have been properly applied. This is based on the frequency of the complainant's requests, the repetitive nature of the requests, the occasional offensive content of the complainant's communications and the indiscriminate nature of the complainant's requests.
27. In the Council's opinion, there appears to be no legitimate purpose to the requests made by the complainant, and many of his requests contain complaints about the Council's decisions and conduct of its officers. The Council asserts that this places unreasonable pressure on its officers when they attempt to respond to the legitimate requests. It points out that where the complainant submits requests for clarification and responses are made, they are often followed up by the complainant making different and often convoluted requests and attacks.
28. All of the requests that have been received from the complainant relate to his dissatisfaction in matters which have followed legitimate resolutions made by the Planning Committee. Such decisions have followed due process and the complainant has also been made aware of legal routes of challenge to such decisions. The complainant has not availed himself of these.
29. It appears to the Council that the complainant's requests appear to be aimed at disrupting its performance and that they serve no legitimate purpose. To support this position the Council has provided the Commissioner with documents concerning the relevant planning applications relating to 'The Doone' and the South Alton Plan, and specifically the Butts Bridge.
30. In reaching its decision, the Council has informed the Commissioner that it has taken into account the context and history of the complainant's requests. It asserts that this is relevant to the complainant's "scattergun approach" taken in his numerous, varied and overlapping requests, and to his unfounded personal accusations and allegations that are made against officers, and the authority as a whole.
31. The Council considers that it has objectively formed the view that the complainant's requests are intended to be annoying or disruptive and

that they have a disproportionate impact on authority, its staff and the Councillors that serve it.

32. The Council has drawn the Commissioner's attention to an extract taken from a website that the complainant frequently posts on:  
  
[http://www.ansteyresidents.org.uk/notice\\_board.php?pageNum\\_notices=5&totalRows\\_notices=6598](http://www.ansteyresidents.org.uk/notice_board.php?pageNum_notices=5&totalRows_notices=6598)
33. In a post on the 8 July 2015 (reference 4334) the complainant mentioned Council officers by name and made defamatory comments about a particular officer, who he suggested should be prosecuted for perjury or fraud.
34. It was necessary for the Council to send a letter to the complainant asking him to desist in this conduct and to remove the post. The Council advised the Commissioner that the complainant failed to do this and that he showed no remorse for his actions despite causing offence and upset to officers concerned.
35. It is the Council's position that the tone or language of the complainant's correspondence goes beyond the level of criticism that the Council and its staff should reasonably expect to receive. Furthermore, the complainant's scattergun approach is a continuance of his pursuit of personal campaigns against the Council's planning team and, specifically against a particular officer whom he has unreasonably targeted. In the Council's opinion, it appears that none of its employees are immune from the complainant's unfounded attacks and derision.
36. In the course of his correspondence, the complainant repeatedly seeks to reopen issues which have already been comprehensively addressed by the Council both via the Council's complaints procedure and through its processing of information requests.
37. Since January 2015, the complainant has met with the Leader of the Council, Councillors and Directors in an attempt to resolve his legitimate questions and concerns. The complainant was invited to meet with the Council's Chief Executive, but only agreed to do so on the basis that all of his questions were answered, instead of the allegation of fraud he had made against the Council's Monitoring Officer.
38. A point was reached where the complainant's conduct led to the Council taking the decision to make the complainant a vexatious complainer, and later a vexatious requester.
39. The Council considers that the complainant takes an unreasonably entrenched position where he rejects attempts to assist and advise him and shows no willingness to engage with the Council. It appears that the complainant is abusing his rights of access to information by using the

legislation as a means to express his anger at various legitimate and legal decisions and to harass and annoy the Council and its staff where he continues to request information from the Council which he already possesses.

40. The Council assures the Commissioner that it has attempted to resolve the complainant's issues and requests but these resolutions have resulted in new problem being raised - often with additional and previously unheard of issues, and by requests for information.
41. The Council has informed the Commissioner that it relies on the decisions in *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013), the Upper Tribunal in *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013 and *Betts vs ICO*, (EA/2007/0109 19 May 2008) and decision notice FER0593614 relating to Bristol City Council.

#### The complainant's representations

42. The Complainant has provided the Commissioner with the following comments:
43. "Although I made the request to [name redacted] on 3 March this year, I still await replies to my various concerns. EHDC's CEO's Executive Assistant wrote to me on 24 March, saying she was attaching an email from a planning officer which it was claimed had been sent to me on 19 February. I pointed out that this had been sent to an incorrect email address, and, therefore, I had not seen it previously. Anyway, it did not answer my request to [name redacted], as it pre-dated that request by some two weeks. She went on to say she was: "asking officers to look into matters you raise". I have heard no answers since, even though I requested a level 2 review."
44. "I responded to the Executive Director's email in great detail on 18 April 2016. Then, and subsequently, I repudiated the charges made against me and requested an apology and answers to my outstanding requests. I believe that [name redacted]'s observations were wholly unjust, and that they impugned my integrity, questioned my reasons for making requests, were hurtful and caused me stress in the process. I asked for details of the justification for my requests being deemed vexatious. I also stated that the Council appeared to be treating me personally as vexatious, not my requests, in contravention of ICO guidelines."
45. "I have received no reply and no apology. Certain Council Officers (including the Monitoring Officer, who has a duty to act in an impartial manner), have continued to make the same unsubstantiated criticisms of me. I asked on a number of occasions to see a copy of the Council's vexatiousness policy with details of the date of its implementation. The



CEO's Executive Assistant eventually sent one, which was undated and appeared to be in draft form. When I enquired further, I received an email from the Council's Governance and Information Manager saying that the Council had a relevant procedure, not a policy, as previously claimed. When I enquired as to when this had been implemented, she wrote: "I have gone back as far as the records we hold, which is June 2012, and spoken with the individuals dealing with Freedom of Information Requests over time and we have no record of having used the vexatious procedure nor have the individuals ever used the vexatious procedure." In other words, this non-existent policy or procedure has been invented purely as a shoddy means of avoiding answering my legitimate FOIA requests. This is highly undemocratic and should not be allowed to go unpunished."

46. "My requests relate to what I and numerous other EHDC residents consider should be the approval of a planning application based on a false premise. Some 1250 of us – 70% of Alton Town's population – signed a petition opposing the decision. I have requested documents that were discussed at the planning meeting and which should be in the public domain [sic]. I believe that the denial of my requests has nothing to do with their being vexatious, but is a disingenuous attempt to suppress information that would embarrass the Council.

#### The Commissioner's decision

47. There is no definition of 'manifestly unreasonable' under the EIR. The Commissioner considers that 'manifestly' implies that the request should 'obviously' or 'clearly' be unreasonable.
48. A request can be manifestly unreasonable for two reasons: Firstly where it is vexatious and secondly where the public authority would incur unreasonable costs or where there would be an unreasonable diversion of resources.
49. There is no definition of the term "vexatious" in the Freedom of Information Act, however the issue of vexatious requests has been considered by the Upper Tribunal in the case of *The Information Commissioner and Devon County Council v Mr Alan Dransfield (GIA/3037/2011)*. In the Dransfield case the Tribunal concluded that the term could be defined as "manifestly unjustified, inappropriate or improper use of formal procedure." The Tribunal identified four factors likely to be relevant in vexatious requests:
- The burden imposed by the request on the public authority and its staff
  - The motive of the requestor
  - Harassment or distress caused to staff



- The value or serious purpose of the request.
50. The Upper Tribunal's decision established the concepts of "proportionality" and "justification" as being central to any consideration of whether a request for information is vexatious.
  51. The key to determining whether a request is vexatious is a consideration of whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear it is necessary to weigh the impact of the request on the public authority against the purpose and value of the request. To do this a public authority must be permitted to take into account wider factors associated with the request, such as its background and history.
  52. To support its position, the Council has provided the Commissioner with a full lever-arch file containing:
    - The complaints made to East Hampshire District Council by the complainant between January 2015 and May 2016;
    - Correspondence between the complainant and the Councils Legal Team; and
    - Correspondence between the complainant and the Council's Governance and Information Manager which followed the Commissioner's earlier intervention in respect of his complaint.
  53. Having examined the contents of the lever-arch file, it is clear to the Commissioner that the complainant has engaged in a large volume of detailed correspondence with the Council about planning application SDNP/13/01760/PRE. This application concerns the building of several dwellings and the demolition of Doone Cottage at Honey Lane, Alton, Selborne.
  54. The complainant has submitted a number of requests for information which concerns the planning application and the Council's decisions. It can be seen from the chronology of the requests (at paragraph 6 above) that the complainant is exhibiting a degree of tenaciousness and persistence in making his requests in his attempts to find fault in a decision which the Council has taken.
  55. Most of the complainant's requests relate to the particular planning application and because of this the Council has determined that the requests have tipped the balance where they have become burdensome and disproportionate.
  56. The Commissioner notes the volume and frequency of the complainant's requests and also the volume of his correspondence with the Council in respect of the Doone planning application.

57. Likewise, the Commissioner notes the complaints raised by the complainant with the Local Government Ombudsman ("the LGO") and the decisions made by the LGO.
58. The first complaint, considered by the LGO in March 2016, was that the Council had not considered whether the planning application met tests required by the Conservation of Habitats and Species Regulations 2010. The second complaint, considered in June 2016, concerned the Council's failure to take enforcement action in respect of alleged breaches of planning restrictions on various planning permissions. The decision of the LGO in in both complaints was that there was no fault on the part of the Council.
59. In addition to submitting requests for information, the complainant has made comments which are hostile to the Council, and in particular about one member of its staff whom he alleges is guilty of fraud.
60. On balance, the Commissioner considers that the complainant's requests represent his attempt to reopen an issue which has been properly addressed through a well-defined, open and accepted planning process. This request is the latest in a chain of requests which have been frequent and overlapping and the point has certainly been reached where the complainant's requests have become disproportionate and burdensome.
61. The Commissioner agrees with the Council that the complainant's requests have passed the point where a reasonable person would conclude they are vexatious and manifestly unreasonable. The Commissioner therefore finds that the Council has properly applied section 14(1) of the FOIA and Regulation 12(4)(b) of the EIR to the complainant's requests. She considers that complying with the complainant's requests would be unreasonably burdensome and an unwarranted use of the Council's resources.

*The public interest test*

*Factors which favour complying with the complainant's requests*

62. Regulation 12(1)(b) provides that:

*...a public authority may refuse to disclose environmental information requested if-*

*(b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.*

63. The Commissioner has considered whether the public interest is best served by the Council complying with the complainant's requests or

whether the public interest lies in maintaining the application of Regulation 12(4)(b).

64. The Commissioner has given weight to the principle that compliance with requests for information and the disclosure of information would potentially increase the public's understanding of the actions taken by the Council and of the processes by which it makes its decisions.
65. Compliance with the complainant's requests and disclosure of further information relating to the Doone, might increase transparency in the Council's decision making procedures and thereby serve to promote greater accountability.

*Factors which favour the Council's application of Regulation 12(4)(b)*

66. The Commissioner cannot ignore the fact that the complainant's requests concern a planning application which has been properly considered in an accepted, open and transparent process.
67. Additionally, different aspects of the Council's decision have been considered by the LGO on two separate occasions and no fault has been found. In the Commissioner's opinion, both of these factors significantly reduce the public interest in the Council being required to comply with the complainant's requests and in placing the requested information into the public domain.
68. The Commissioner also understands that the Council has advised the complainant of his right to seek a Judicial Review of its decision and that, to date, he has not availed himself of this opportunity.
69. It is clear to the Commissioner that complainant's requests have placed a significant burden on the Council and they have caused disruption and unwarranted use of the Council's increasingly limited resources.
70. Although not a significant factor in her decision, the Commissioner cannot ignore the unfounded and public allegation which the complainant made about a particular officer. This allegation was upsetting to the officer concerned and it served no purpose other than to disparage and harass the Council.
71. The Commissioner considers that these facts provide sufficient weight to countervail the public interest which favours complying with the requests and therefore the Commissioner has decided that the Council is entitled to rely on Regulation 12(4)(b) in respect of the complainant's requests.

## Right of appeal

---

72. 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: 0870 739 5836  
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)

73. 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.

74. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**