

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

Date: 1 July 2021

Public Authority: Blaby District Council
Address: Council Offices
Desford Road
Narborough
Leicester
LE19 2EP

Decision (including any steps ordered)

1. The complainant requested from Blaby District Council (“the Council”) various information relating to his address. The Council refused to comply with the requests under section 14(1) (vexatious requests) of the FOIA and regulation 12(4)(b) (manifestly unreasonable requests) of the EIR.
2. The Commissioner’s decision is that the Council was entitled to apply section 14(1) of the FOIA and regulation 12(4)(b) of the EIR. However, the Council breached regulation 14 of the EIR by failing to inform the complainant of its refusal under that legislation.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 26 October 2020, the complainant wrote to the Council and requested information in the following terms:

"i will also require photographic evidence of the alleged 120 vehicles parked at [redacted address] on the 29/10/2014 , all these will need to be timed and dated , i will also want soil samples , that [redacted name] in his professional capacity , and the other agencies he claims to have leased with , and copies of the photos that [redacted name] . and [redacted name] took of my barn containing my livestock and feed these were taken on the 30 th september 2014 the last time they were here before [redacted name] and his destruction..."

5. On 1 November 2020, the complainant wrote further to the Council and made the following request:

"freedom of information request, for complaints made about [redacted address] by [redacted name] of [redacted address] along with copies of the photographs she used to take , then copies of all the complaints made by [redacted name] and his partner [redacted name] both of [redacted address] this is to include the letter sent to there mp [redacted name] , and then the letter sent to blaby district council by the said mp instructing the council to get rid of this alleged illegal scrap yard , and mobile home from in front of his constituents home , i have been found not guilty of any kind of illegal scrap yard or waste disposal operations at [redacted address] , hard copies pls..."

6. The Council responded on 6 January 2021. It refused to comply with the requests under section 14(1) of the FOIA. It also refused other requests made by the complainant between 30 August 2020 and 2 January 2021.
7. Following an internal review, the Council wrote to the complainant on 5 February 2021. It maintained the application of section 14(1).

Scope of the case

8. The complainant contacted the Commissioner 11 March 2021 to complain about the way the requests for information had been handled, and specifically argued that the Council was not entitled to apply section 14(1) of the FOIA.
9. During investigation, the Council confirmed that, in respect of that information which is environmental, it wished to rely upon regulation 12(4)(b) of the EIR.

10. The scope of this notice is whether the Council was entitled to rely on section 14(1) of the FOIA and regulation 12(4)(b) of the EIR to refuse to comply with the requests.

Reasons for decision

Is part of the information environmental?

11. Information is "environmental" if it meets the definition set out in regulation 2 of the EIR. Environmental information must be considered for disclosure under the terms of the EIR.
12. Under regulation 2(1)(c), any measures that will affect, 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.
13. The requested information partly relates to planning control actions, which can be identified as measures that may affect the elements and/or factors. The Commissioner therefore considers it appropriate to consider those parts of the requests that seek environmental information under the terms of the EIR.

Section 14(1) of the FOIA – Vexatious requests **Regulation 12(4)(b) of the EIR - Manifestly unreasonable requests**

14. 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.

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;

16. The Commissioner recognises that, on occasion, there can 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 requests could be considered as vexatious.

17. The Commissioner has published guidance on vexatious requests¹. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. Sometimes, it will be obvious when requests are vexatious, but sometimes it may not. In such cases, it should be considered whether the request would be likely to cause a disproportionate or unjustified level of disruption, irritation, or distress to the public authority. This negative impact must then be considered against the purpose and public value of the request. A public authority can also consider the context of the request and the history of its relationship with the requestor when this is relevant.
18. While section 14(1) of the FOIA effectively removes the duty to comply with a request, regulation 12(4)(b) of the EIR only provides an exception. As such the EIR explicitly requires a public authority to apply a public interest test (in accordance with regulation 12(1)(b)) before deciding whether to maintain the exception. The Commissioner accepts that public interest factors, such as proportionality and the value of the request, will have already been considered by a public authority in deciding whether to engage the exception, and that a public authority is likely to be able to "carry through" the relevant considerations into the public interest test. However, regulation 12(2) of the EIR specifically states that a public authority must apply a presumption in favour of disclosure. In effect, this means that the exception can only be maintained if the public interest in refusing the request outweighs the public interest in responding.

The complainant's position

19. The complainant has explained to the Commissioner that the information requests have been made to challenge planning control actions by the Council, including what he considers to be deficiencies with direct action that the Council undertook at his property.
20. The complainant has explained that he has other concerns including "*covid breaches*" by officers and members of the public, planning breaches by other parties, the Council's use of vehicles with expired MOT certificates, and what he considers to be the Council's failure to provide refuse bags - and otherwise collect refuse - for over 14 years.

¹ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

The Council's position

21. The Council considers that the information requests, and other items of correspondence submitted by the complainant, are intrinsically related to his dispute against the various actions that the Council has taken against the complainant's address since 2002.
22. These actions have largely been focussed on planning control and Council Tax payment, and have included an Enforcement Notice served by the Council in 2012, direct action taken by the Council at the complainant's address in 2014, and a subsequent Injunction and Charging Order issued by the Courts. The Council has further stated to the Commissioner that the sums owed by the complainant to the Council, which include the cost of direct action taken in 2014, and the costs awarded to the Council by the Injunction, continue to be disputed by the complainant.
23. The Council has explained that it has previously sought to engage with the complainant's information requests under the FOIA and EIR. The Council has provided the Commissioner with an example response and internal review outcome (of 6 August 2020 and 1 September 2020, respectively) that it provided in response to six information requests made between 19 June 2020 and 8 July 2020, in which the Council attempts to answer the complainant's questions relating to his property. The Council has also provided a chronology of 8 other requests submitted between 6-12 August 2020, and copies of the Council's responses in which it either discloses information, denies that it is held, or states that the information is withheld under an exemption.
24. The Council has provided the Commissioner with a letter that it sent to the complainant on 3 September 2020, in which it advised that the complainant had submitted 283 individual emails over the preceding three months, and that all subsequent contact would be through a senior officer appointed as a single point of contact. This letter also advised that the Council would decline to address any further questions or information requests relating to the substantive areas of dispute, including refuse collection, Council Tax, planning controls, staffing matters, and debt recovery. The Commissioner notes that in this letter, the Council also refers the complainant to his rights of complaint to both the Local Government and Social Care Ombudsman (in respect of the Council's limiting of his contact with officers), and the Commissioner (in respect of the Council's handling of his information requests).
25. The Council considers that the complainant's interactions with it have become significantly burdensome through 2020, with the complainant applying a 'scattergun' approach to contacting officers throughout the Council. This has led to the Council applying an email filter to direct all

incoming emails to the single point of contact. The Council also perceives that these interactions have become increasingly offensive, with personal attacks and accusations made against specific Council officers in the complainant's correspondence.

26. The Council has further stated that the complainant's wider actions have included targeted observations on Council officer's properties – which has led to CCTV being installed at officer's homes.

The Commissioner's analysis

27. Firstly, the Commissioner would like to highlight that there are many different reasons why a request may be vexatious, as reflected in the Commissioner's guidance. There are no prescriptive "rules", although there are generally typical characteristics and circumstances that assist in making a judgement about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed as vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates them. A commonly identified feature of vexatious requests is that they can emanate from some sense of grievance or alleged wrongdoing on the part of the authority.
28. The Commissioner's guidance emphasises that proportionality is the key consideration for a public authority when deciding whether to refuse a request as vexatious. The public authority must essentially consider whether the value of a request outweighs the impact that the request would have on the public authority's resources in responding to it. Aspects that can be considered in relation to this include the purpose and value of the information requested, and the burden upon the public authority's resources.

The purpose and value of the requests

29. The Commissioner has reviewed the refused requests and, having considered the information that is sought, considers it reasonable to conclude that they are related to the wider substantive matters already described.
30. Whilst it is evident to the Commissioner that the Council's actions, and related decisions by the Courts, are a matter of strong dissatisfaction to the complainant, there is no evidence that indicates to the Commissioner that the Council has acted improperly in its role as a planning authority, and it is equally reasonable for the Commissioner to note that the complainant will have had various routes of appeal, both to the Council and the Courts, in respect of the subject matters that the requests relate to.

31. It is also noted by the Commissioner that the Council has previously sought to comply with earlier requests by disclosing held information (including a highly detailed response on 6 August 2020 in which the Council responds to six individual requests relating to the complainant's address), or otherwise providing answers to the questions posed by the complainant. Whilst the Council has previously informed the complainant of his right to complain to the Commissioner, it is relevant for her to note that the complainant has not submitted any clear complaint to her until this point, and additionally, he has not provided any clear evidence about why he considers the Council's handling of his earlier requests to be deficient, or how he considers that the two requests under consideration will provide any resolution to matters.
32. Having considered these circumstances, the Commissioner has concluded that, rather than submitting the requests to access official information, the complainant is using the rights provided by the FOIA and EIR to attempt to oblige continued engagement by the Council on matters that either the Council, or the Courts, have already deemed to be addressed.

The burden upon the Council

33. It is evident to the Commissioner that the complainant's previous information requests, in conjunction with a significant volume of correspondence, have already placed significant burden upon the Council. It is recognised that compliance with the requests under consideration here would, out of necessity, require further public resources to be expended.
34. The Commissioner also recognises that responding to these requests would be highly likely to generate further related requests and correspondence, thereby placing further burden upon the Council.

The Commissioner's conclusion on Section 14(1) of the FOIA

35. It is recognised by the Commissioner that the requests relate to long-running issues and related formal action by the Council. As such, it is reasonable for the Commissioner to consider that processes to defend himself, or otherwise challenge the Council's position, these would have been available to the complainant – particularly in that several matters have been referred to the Courts.
36. There is no compelling evidence available to the Commissioner that suggests that the Council's compliance with the requests would conclude the matter, or provide additional transparency to the complainant beyond the numerous information requests that the Council has already responded to on the same, or related, matters.

37. It is also pertinent for the Commissioner to consider that the requests relate to what is a private interest (i.e., the complainant's own property), and there is no evidence available to the Commissioner that suggests compliance with the requests would serve a wider purpose that may provide value to the public.
38. Having considered the limited value of the requests, in conjunction with the burden on the Council's resources, the Commissioner has therefore concluded that the Council's application of section 14(1) of the FOIA, in respect of that information which is not environmental, was correct.

The Commissioner's conclusion on Regulation 12(4)(b) of the EIR

39. In respect of that information which is environmental, the Commissioner is satisfied, for the same reasons outlined under the FOIA, that regulation 12(4)(b) of the EIR is engaged.
40. As such, she must consider whether the required public interest test supports the maintenance of the exception.

The public interest test

41. Regulation 12(1)(b) of the EIR states 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.

42. The Commissioner recognises that the requests relate to a matter of personal concern to the complainant, and that the disclosure of any known further information would represent transparency and openness on the part of the Council.
43. However, the Commissioner has already noted that the requests relate to long running issues that have already been concluded, with the Council or Courts taking relevant actions. There is no indication to the Commissioner that compliance with the requests would address any deficiency with those actions, or otherwise allow matters to be concluded. There is also no evidence that suggests compliance with the requests would address a wider public interest.

The outcome of the public interest test

44. Having considered these factors, the Commissioner has concluded that the public interest in maintaining the exception outweighs the public interest in complying with the requests.

Regulation 14 of the EIR – Refusal to disclose information

45. Regulation 14 of the EIR requires that where a public authority refuses to disclose information under an exception, this is stated in writing within 20 working days.
46. In this case, the Council did not recognise that the requests would partly fall under the terms of the EIR, and consequently did not apply (and cite) regulation 12(4)(b) until a complaint was brought to the Commissioner. On this basis the Commissioner finds a breach of regulation 14.

Right of appeal

47. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

48. 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.
49. 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

Daniel Perry
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