

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

**Date:** 6 February 2023

**Public Authority:** Harrogate Borough Council  
**Address:** Civic Centre  
St Luke's Avenue  
Harrogate  
HG1 2AE

**Decision (including any steps ordered)**

---

1. The complainant has requested information from Harrogate Borough Council (the Council) about a local leisure centre and swimming pool. The Council has refused to comply with the requests on the basis that they consider them to be vexatious.
2. The Commissioner's decision is that the Council has correctly relied on section 14(1) of FOIA and regulation 12(4)(b) of the EIR to refuse the requests, and that the balance of the public interest favours maintaining the exception so far as the environmental information is concerned.
3. The Commissioner does not require the public authority to take any further steps.

**Request and response**

---

4. Between 18 November 2021 and 2 December 2021, the complainant wrote to the Council six times submitting requests for information which totalled 54 separate points for the Council to consider responding to.
5. Due to the length of the requests, the Commissioner has not repeated the full wording in this notice, but he satisfied that both he and the

Council have had access to the full text to consider during the responses and subsequent investigation.

6. The Council responded to all of the requests in one response on 20 December 2021. It stated that point 9 was not a request for recorded information, and that points 14 and 15 were requests for the complainant's own personal information which fell within the scope of two Subject Access Requests which the complainant had submitted in 2021, and which the Council had already responded to and disclosed the personal information which it holds relating to the complainant. The Council went on to explain that it was refusing the remaining 51 points on the basis that it considered the requests to be vexatious and manifestly unreasonable – citing section 14(1) of FOIA for the parts of the requests which sought non-environmental information and regulation 12(4)(b) of the EIR for the parts which sought environmental information respectively.
7. Following an internal review the Council wrote to the complainant on 9 February 2022. It upheld its original position.

### **Scope of the case**

---

8. The complainant wrote to the Commissioner on 2 March 2022 to complain about the way their request for information had been handled. They argued that disclosure of the requested information was in fact in the public interest, specifically the public's safety.
9. The Commissioner considers the scope of his investigation is to consider whether the requests were vexatious and/or manifestly unreasonable.
10. For clarity, the Commissioner is making no finding of fact, in this Decision Notice, as to whether the Council does or does not hold the requested information.

### **Reasons for decision**

---

#### **Are parts of the requests for environmental information?**

11. Information is considered to be 'environmental' if it meets the definition set out at regulation 2(1) of the EIR. Environmental information must be considered for disclosure under the terms of the EIR.
12. The Commissioner is satisfied that some of the requested information would fall under the definition of the "state of the elements of the environment" given at regulation 2(1)(a), as it would be about the state of the ground at the site of the leisure centre. The Commissioner is

further satisfied that some of the requested information would fall under the definition of "measures" given at regulation 2(1)(c), as it would be about ground investigation works. Therefore, the Council correctly considered some parts of the requests under the EIR.

**Section 14(1) of FOIA – vexatious requests**  
**Regulation 12(4)(b) of the EIR – manifestly unreasonable requests**

13. Section 14(1) of FOIA states that:

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

14. 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"

15. Following the lead of the Upper Tribunal in *Craven v Information Commissioner & DECC* [2012] UKUT 442 (AAC), the Commissioner considers that there is, in practice, no difference between a request that is vexatious under the FOIA and one which is Manifestly Unreasonable under the EIR – save that the public authority must also consider the balance of public interest when refusing a request under the EIR. The Commissioner has therefore considered the extent to which the requests could be considered as vexatious.

16. The term "vexatious" is not defined within FOIA. The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield* [2012] UKUT 440 (AAC). It commented that "vexatious" could be defined as the "manifestly unjustified, inappropriate or improper use of a formal procedure". The Upper Tribunal's approach in this case was subsequently upheld in the Court of Appeal.

17. The Dransfield definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.

18. The Commissioner has published guidance on dealing with vexatious requests<sup>1</sup>, which includes a number of indicators that may apply in the case of a vexatious request.
19. When determining if a request is vexatious, a public authority can consider the context of the request and the history of its relationship with the requester, as the guidance explains: "The context and history is often a major factor in determining whether the request is vexatious and may support the view that section 14(1) applies".
20. However, the Commissioner is also keen to stress that in every case, it is the request itself that is vexatious and not the person making it.
21. In some cases it will be obvious when a request is vexatious but in others it may not be. The Commissioner's guidance states: "The key test is to determine whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress."

### **The complainant's position**

22. Whilst the complainant hasn't directly addressed the Council's assertion that the requests are vexatious, they reiterated their arguments to the Commissioner that it is in the public interest for the Council to disclose all of the requested information it holds in relation to the Ripon Leisure Centre site as the ground stability poses real and present risks to public safety. They stated that "inherent structural vulnerability to ground subsidence of the new and to-be-refurbished buildings at this unstable site are, in my view, likely not only to incur massive further financial cost to the community, but also represent unacceptable ongoing risk to the safety and wellbeing of the Ripon community."

### **The Council's position**

23. The Council argued that whilst there is inherent value in the Council being transparent regarding its decision making, it is also in the wider public interest to protect the Council from requests which are unreasonable. The Council considers that complying with the requests in this case would impose a significant burden on it, as the 54 requests are complex and voluminous in nature and responding to them would divert or distract staff from their usual core duties and impose a significant administrative burden.

---

<sup>1</sup> <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/dealing-with-vexatious-requests-section-14/>

24. The Council also argued that, given the complainant's previous history of requests and correspondence on this subject matter, it is in no doubt that responding to these requests would likely result in the complainant submitting further requests. Further, it stated that there is a clear quality to the unreasonableness of the requests, and the proportionality of the burden on the Council's workload is a significant factor in it reaching the conclusion that the requests are vexatious.

### **The Commissioner's analysis**

25. As detailed in the Commissioner's guidance, there are many reasons why a request for information can be considered to be vexatious. There are no prescriptive "rules", although there are generally typical characteristics and circumstances which assist in making a judgement about whether a request is vexatious.
26. 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. Ultimately, section 14(1) of FOIA and regulation 12(4)(b) of the EIR are designed to protect public authorities from having to respond to requests which would cause a disproportionate burden or unjustified level of disruption, irritation or distress.
27. Whilst it is clear that the wider subject of issues surrounding Ripon Leisure Centre is of interest to the local community, and the requested information would undoubtedly carry great meaning to the complainant themselves as a retired Chartered Engineer, the Commissioner is not persuaded that the level of technical information which the complainant is seeking is of notable value to the general public. Further, the Council is actively addressing the concerns surrounding the ground stability at the site of Ripon Leisure Centre, and the Commissioner is satisfied that there is sufficient information available in the public domain about this work to satisfy the wider public interest.
28. The complainant in this case provided (of their own volition) detailed background information regarding their history of requests for information and general correspondence to the Council regarding this subject, spanning from 2018 to the present. Unfortunately for the complainant, this had the effect of strengthening the Council's assertion that the requests are vexatious. This is because it detailed the protracted nature and unreasonable persistence in the complainant's pursuit of this matter, both in terms of the volume of contacts the complainant has made with the Council and the breadth of those contacts.

29. The Commissioner also notes the Council's reference to a request from August 2021 which was about the same subject but far narrower in scope, which the Council refused as manifestly unreasonable. It would therefore clearly follow that requests which are far broader and more complex in nature would also be refused.
30. It is evident to the Commissioner that the complainant's previous requests and correspondence have already placed a significant burden upon the Council, and that compliance with the current, extremely voluminous, requests (which, put together, run to 11 closely typed A4 pages) would require further public resources to be expended. The Commissioner also accepts the Council's assertion that responding to these requests would be highly likely to generate further related requests and correspondence, thereby placing further burden upon the Council.
31. The Commissioner notes that the Council has not separately set out its public interest test for the environmental information, which is required by regulation 12(1)(b) of the EIR, however he is satisfied in this case that the Council gave relevant consideration to the public interest during its arguments for engaging the exception. In addition, he would note that there is always a strong inherent public interest in allowing a public authority to protect itself from manifestly unreasonable requests.
32. Regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions. As stated in the Upper Tribunal decision *Vesco v Information Commissioner & Government Legal Department* [2019] UKUT 247 (AAC), "If application of the first two stages has not resulted in disclosure, a public authority should go on to consider the presumption in favour of disclosure..." and "the presumption serves two purposes: (1) to provide the default position in the event that the interests are equally balanced and (2) to inform any decision that may be taken under the regulations" (paragraph 19).
33. As covered above, in this case the Commissioner's view is that the balance of the public interests favours the maintenance of the exception, rather than being equally balanced. This means that the Commissioner's decision, whilst informed by the presumption provided for in regulation 12(2), is that the exception provided by regulation 12(4)(b) was applied correctly.
34. Having considered all circumstances of this case, the Commissioner concludes that these requests were a "manifestly unjustified, inappropriate or improper use of a formal procedure" and therefore vexatious. On this basis he finds that section 14(1) and regulation 12(4)(b) are engaged, and the balance of the public interest favours maintaining the exception for the environmental information.

## Right of appeal

---

35. 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](mailto:grc@justice.gov.uk)

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

36. 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.
37. 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 .....**

**Roger Cawthorne**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**