Reference: FER0281858

Freedom of Information Act 2000 (Section 50)
Environmental Information Regulations

Decision Notice

Date: 15 September 2010

Public Authority: Stafford Borough Council
Address: Civic Centre
Riverside
Stafford
ST16 3AQ

Summary

The complainant submitted a 14 page letter to the Council attaching 9 separate requests for information relating to a piece of land near to his property used as public open space. The Council responded to the request citing regulation 12(4)(b) of the EIR and advised the complainant that it considered the request to be manifestly unreasonable. As the complainant remained dissatisfied he approached the Commissioner for the matter to be given formal consideration. The Commissioner investigated the issues raised and concluded that the complainant's request is manifestly unreasonable and that the Council was correct to rely on regulation 12(4)(b) of the EIR.

The Commissioner's Role

1. The Environmental Information Regulations (EIR) were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR.

Background

The complainant has been in a long running dispute with the Council since November 2007 concerning the use of a particular piece of land near to his property as public open space. In Town and Country Planning terms, the land is designated as protected open space. A previous planning agreement had originally intended that the land would be gifted to the Council for use as public open space. However, the land was never transferred to the Council and it has more recently been determined, following legal advice, that the Council cannot enforce these old agreements. The complainant's correspondence and information requests dating back to 2007 relate to this issue and the Council's failure to secure ownership of this land.

The Request

2. The complainant wrote a 14 page letter to the Council on 8 September 2009. Attached to this letter were 9 separate attachments detailing requests for the following information:

a) "The Head of Departments briefing paper (date unknown) and the Leaders briefing paper (dated 7 February 2006) and additionally the minutes of the meeting/subsequent meeting to discuss the papers."
b) "Council's brief to its legal advisers and a copy of the advices received."
c) "The file notes for meetings held between the Council and [Hallam Land Management] HLM to discuss the disputed ownership of the land and the outstanding issues relating to the land, including a copy of the "compromise solution"."
d) "The formal request to HLM seeking the acquiescence;
"A copy of the reply from HLM agreeing to the acquiescence;
"A copy of the acquiescence."
e) "The "Risk Assessment" carried out in respect of the land and its facilities prior to the Council's commencement of the maintenance in 1992 and also a copy of the current "Risk Assessment" as part of the agreement of the acquiescence with Hallam Land Management, the landowner in May 2005."
f) "The file notes of the Pre-Application meetings held between the Council and HLM to discuss the proposed planning application."
g) "The amended open space layout BH 6240/2B received (by the Council) on 13th April 1983."
h) "The amendment to the "Permission for Development" – Application NO 14292, Date Registered 26 January 1983, Decision Date 27 April 1993 (in reference to the removal or amendment to point 14 which

states “Within four months of the development hereby permitted being completed, the proposed landscape scheme and that agreed pursuant to condition 10, shall be implemented and thereafter satisfactorily maintained, including the replacement of any subsequent failures”).”

i) “The information contained within the “additional file” relating to this matter which was found after you ceased correspondence with me in September 2008”.

3. The Council responded on 29 September 2009 advising the complainant that it had applied regulation 12(4)(b) to the entire request, as it considered the request to be manifestly unreasonable.

4. The complainant requested an internal review on 20 October 2009.

5. The Council responded on 10 November 2009 confirming that it remained of the opinion that regulation 12(4)(b) of the Act applied in this case.

The Investigation

Scope of the case

6. On 7 December 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant forwarded copies of correspondence between the Council and the Local Government Ombudsman (LGO) dating back to November 2007 and specifically asked the Commissioner to consider whether the Council is correct to rely on regulation 12(4)(b) of the EIR in respect of his latest information request dated 8 September 2009.

7. The Commissioner has received a considerable amount of information relating to the complainant’s long running dispute with the Council and copies of key correspondence with the LGO. He wishes to point out that he cannot consider or indeed comment on the merits of the dispute or the investigation conducted by the LGO, which was concluded in July 2009, as this is not his remit. The Commissioner can only consider the Council’s application of 12(4)(b) of the EIR to the complainant’s request dated 8 September 2009.

Chronology

8. The Commissioner wrote to the complainant and the Council on 11 December 2009 to confirm that the complaint was awaiting allocation.

9. The complainant contacted the Commissioner on 3 February 2010 to advise him that the Council had recently accepted a planning application in respect of the land in question, highlighting the importance of receiving the information he has requested.

10. The Commissioner wrote to the Council on 24 February 2010 to request some additional information and further more detailed arguments in support of its application of regulation 12(4)(b).

11. As no response was received, the Commissioner wrote to the Council again on 12 April 2010 to request that the outstanding information is provided as soon as possible.

12. The Council responded on 20 April 2010 providing the additional information requested.

Analysis

Exemptions – 12(4)(b) manifestly unreasonable

13. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose information if the request for information is manifestly unreasonable. While the EIR contains no definition of the term "manifestly unreasonable", it is the Commissioner view that "manifestly" means that a request should be obviously and clearly unreasonable – there should be no doubt as to whether a request is unreasonable.

14. There is no single test for what sorts of requests may be considered to be manifestly unreasonable. Instead, each individual case is judged on its own merits taking into account all of the circumstances surrounding the request. In the Information Tribunal hearing of *Carpenter v Stevenage Borough Council (EA/200/0046)* the Tribunal considered regulation 12(4)(b) and whether this could be applied in the same way as section 14 of the Act. The Tribunal decided that the principles considered when looking at section 14 of the Act can also be applied to requests involving regulation 12(4)(b). Following the decision reached in this Tribunal case, it is the Commissioner's view that regulation 12(4)(b) will apply where it is demonstrated that a request is vexatious or that compliance would incur unreasonable costs for the public authority or an unreasonable diversion of public resources.

15. In his Awareness Guidance No 22 'Vexatious and repeated requests' (published 3 December 2008) the Commissioner has outlined a list of criteria which is useful to consider when determining whether a request for information is vexatious or not. The list of criteria is as follows:

- Could the request fairly be seen to be obsessive or manifestly unreasonable?
- Is the request harassing the authority or distressing the staff?
- Would complying with the request impose a significant burden in terms of expense and distraction?
- Is the request designed to cause disruption or annoyance?
- Does the request lack any serious purpose or value?

16. It is not necessary for all of the above criteria to apply. However, it is the Commissioner's view that at least one of the above criteria must apply for a request to be considered vexatious and, in general terms, the more criteria that do apply the stronger the case. He accepts that many of the arguments submitted by the Council in support of this exception can also apply to more than one of the above criteria.

17. When determining whether a request should be deemed vexatious and whether one or more of the above criteria applies, the Commissioner can consider the wider context and history of the request. In certain cases, a request may not be vexatious in isolation but when considered in context it may form part of a wider pattern of behaviour that makes it vexatious. Nevertheless, the Commissioner recognises that it is the request and not the requester that must be vexatious in order for the exception to apply.

Can the request fairly be seen as obsessive?

18. It is the Commissioner's view that obsessive requests are usually a very strong indication of vexatiousness. Relevant factors could include the volume and frequency of correspondence, requests for information the requester has already seen, or a clear intention to use the request to reopen issues that have already been debated and considered.

19. The Council confirmed that the complainant has been in correspondence with it for over 2 years and all correspondence and information requests it has received centre on one issue; the use of a particular piece of land as public open space. It argued that it has spent a considerable amount of time and resources answering the numerous questions the complainant has raised over this period and dealing with the 7 previous information requests. Every time it has responded or sought to assist the complainant it has received further

lengthy correspondence asking further questions and seeking further information.

20. It also explained that the central issue has also been investigated independently by the LGO. However, the complainant seems unwilling to accept the LGO's findings and wishes to continue pursuing the matter further. It confirmed that the latest information request (dated 8 September 2009) compromises of 14 pages discussing and requesting further information relating to the same topic, which it considers can fairly be seen to be obsessive.

21. Although the level of information requests cannot in itself be considered to be obsessive, taken in conjunction with the lengthy protracted correspondence over a 2 year period concerning a dispute which ran alongside these requests, it is the Commissioner's view that the Council has received a high volume of correspondence disputing the same issue on a consistent, often frequent basis. He acknowledges that correspondence with the Council ceased whilst the LGO undertook its investigation. However, it is evident that once the LGO had reached a settlement between the complainant and the Council and ended its investigation, the complainant commenced his previous pattern of behaviour sending a 14 page letter disputing the same issue and attaching 9 separate attachments requesting additional information under the EIR. It is the Commissioner's opinion that the continuation of a pattern of requests/correspondence can be fairly be seen to be obsessive.

22. It is the Commissioner's view having reviewed the nature of the previous correspondence and requests that each response generates further lengthy questions and requests for information and this behaviour will more than likely continue. Continuance of such behaviour would be viewed by any reasonable person to be obsessive.

23. As stated above, the LGO carried out an independent investigation following the Council's letter to the complainant dated 23 July 2008, which clearly stated that the Council would not enter into any further correspondence with the complainant on this issue. Despite the LGO finding in the complainant's favour and resolving the matter as far as it can realistically be resolved in the circumstances, the complainant continued to pursue the matter via the information regulations, submitting further lengthy correspondence containing further requests for information. The Commissioner considers the latest request to be an attempt to reopen matters already independently investigated.

24. In the Information Tribunal hearing of *Ahilathirunayagam v ICO and London Metropolitan University EA/2007/0024* the Tribunal stated that

where a request appeared to be "intended simply to reopen issues which had been disputed several times before" it could rightly be judged as vexatious.

25. For the reasons explained above, the Commissioner is satisfied that the request can fairly be seen to be obsessive.

Is the request harassing the authority or causing distress to the staff?

26. As stated previously, in many cases, there will be an element of overlap between the different criteria outlined in paragraph 15 above. For example, a request which is considered to be obsessive will often be said to have the effect of harassing the public authority. Other relevant factors are the use of hostile or abusive language, unreasonable fixations on particular members of staff and correspondence which demonstrates the applicant has mingled complaints and accusations against the Council and its staff with information requests.

27. The Council argued that the subject matter of the complainant's request has already been dealt with by an independent investigator. It considers further pursuance of the Council and its officers appears to be contrary to the resolution recommended by the LGO and can therefore be fairly seen to be harassing.

28. Although the Commissioner has found in this case that the request is obsessive and in many cases this does lead to the judgement that the request has the effect of harassing the Council, he does not consider this particular request to be either harassing or distressing. The Commissioner notes that this request is the eighth request in just over 12 months and each request has been politely written. There is also no evidence to suggest that any correspondence or issues the complainant has raised have been directed at particular members of staff.

Would complying with the request impose a significant burden in terms of expense and distraction?

29. The Council advised that its officers have already spent a significant amount of time responding to the complainant's requests and correspondence on this subject and locating and providing relevant information. To require these officers to spend more time researching the points and extracting information in relation to this matter would impose a significant burden in terms of expense and distraction of officers from other duties. The Council stated that it considers the central issue to these requests and correspondence has already been thoroughly investigated and to deal with the complainant's latest

request would place a significant and unnecessary burden on the Council.

30. In the Information Tribunal hearing of *DBERR v Information Commissioner (EA/2008/0096)* the tribunal stated that "public authorities may be required to accept a greater burden in providing environmental information than other information" (paragraph 39). This decision was based upon the clear presumption in favour of disclosure provided in the EIR regulations and because of the nature of the obligations laid on the UK via the Aarhus Directive.

31. The Commissioner has considered the evidence provided by the Council and taken into account the tribunal's findings in the case of *DBERR*. He notes that the complainant has made 7 previous requests. Although in isolation this may not appear to be excessive, taken in conjunction with the numerous other letters the Council has received relating to and debating the same issue, some of which have been several pages long requesting bespoke answers and explanations to questions that cannot be considered under the EIR, it is apparent that the Council has already spent a considerable amount of time, public money and resources addressing this matter. To respond to the complainant's latest request and other issues raised outside of the EIR would place a significant burden upon the Council in terms of time and expense and disproportionately divert and distract the Council and its staff away from other business to a matter which has already been the subject of an independent investigation.

32. The pattern of previous requests and correspondence strongly suggests that if the Council had responded to this latest request it would more than likely lead to further requests and correspondence from the complainant, which would place an even greater burden upon the Council in terms of expense and distraction. The Commissioner considers this view is further supported by the fact that the complainant is using the information regulations to re-open and revisit the central issue to his requests and correspondence, which has already been investigated by the LGO. As stated previously in this Notice, the LGO reached a settlement between the Council and the complainant and attempted to resolve the central issue as far as is possible.

33. For the reasons explained above, the Commissioner is satisfied that had the Council responded to this request it would have imposed a significant burden on the Council in terms of expense and distraction.

Is the request designed to cause disruption or annoyance?

34. As the Commissioner's Awareness Guidance stipulates, this is a difficult factor to prove, as it relates to the requester's intention. Unless the requester has explicitly stated that their intention is to cause disruption and annoyance or there is independent evidence to support this, it will be difficult for any public authority to argue that this factor applies in a particular case.

35. The Council has not presented any arguments to suggest that the complainant's latest request is designed to cause disruption and annoyance. In the absence of any supporting arguments, the Commissioner can only conclude that in this case the request is not designed to cause disruption and annoyance.

Does the request lack any serious purpose or value?

36. The Council argued that the request serves no serious purpose or value because further debate and information is not going to change the historical facts relating to the piece of land in question. The Council confirmed that the complainant's concern is the potential loss of land he considers is public open space should a planning application be accepted. Over the last 2 years following the complainant's correspondence and requests and the LGO's investigation into the planning status of this land, the inability of the Council to enforce ownership and public access through an old planning agreement has been made clear. It stated that these are the only historical facts that may have a bearing on what future use the land can be put to and therefore there is no serious purpose or value in pursuing this matter further as it will not change these historical facts. It confirmed that the complainant had informed the LGO of his desired outcome and it had reached its own independent findings.

37. In this case the Commissioner does not accept that the request lacks serious purpose or value. He accepts that the central issue and the information the complainant is seeking to obtain is of great importance to him and affects his property. The relevant consideration now is whether this serious and proper purpose justifies the ongoing campaign against the Council and the continuing information requests.

38. As stated previously in this Notice, the Commissioner found this latest request to be obsessive due to the fact that the central issue had been debated and independently considered by the LGO. He also notes that the planning status of the land in question has now been made clear and the Council has confirmed, following legal advice it obtained on the issue, that the complainant's desirable outcome can not be achieved.

Further debate and information is not going to change this situation. For these reasons, the Commissioner has concluded that although the request has purpose and value to the complainant this fact alone does not justify the continual pursuit of this matter via the information regulations.

Conclusion

39. The Commissioner is satisfied that three of the five criteria outlined in paragraph 15 above apply in this case and that regulation 12(4)(b) of the EIR is engaged.

The public interest test

40. Regulation 12(1)(b) of the EIR requires that a public interest test is carried out in cases where regulation 12(4)(b) is found to be engaged. The test is whether the public interest in maintaining the exception outweighs the public interest in disclosing the information.

41. When considering the public interest test, the Commissioner has taken into account regulation 12(2) of the EIR. This states that a presumption in favour of disclosure must be applied.

The public interest in disclosing the information

42. The Commissioner accepts that disclosure would promote transparency and accountability within the Council and provide information relating to the use of the land in question as public open space.

43. However, he feels there is little wider public interest in requiring the disclosure of this information. The complainant's request and previous requests relate to his property and a piece of land used as public open space by him, his family and surrounding neighbours. The requested information and the issues this addresses affects a relatively small number of people; the complainant, his family and property owners in the surrounding area. The central issue is personal to the complainant and possibly to a small number of others.

The public interest in maintaining the exception

44. The Commissioner accepts that there are compelling arguments in favour of maintaining this exception in this case due to the public interest in protecting the integrity of the EIR and ensuring that they are used responsibly. While public authorities are encouraged towards acting in a transparent and accountable nature which benefits the public as a whole, it is not the intention of the legislation to require

public authorities to tolerate individuals who demonstrate obsessive behaviour when seeking information. If the Commissioner were to find such behaviour appropriate, this would seriously undermine the purpose of this legislation. The Commissioner is strongly of the view that public authorities should be able to concentrate their resources on dealing with legitimate requests rather than being distracted by requests which continue to request information and debate underlying matters which have already been thoroughly investigated and where the wider public interest would not be served by the disclosure of information.

45. As stated previously, the Commissioner accepts that the complainant has genuine reasons to pursue the central issue to his requests and correspondence. However, it is apparent that the Council has already spent a considerable amount of time and public resources dealing with the matter in question. The matter has also been independently investigated by the LGO, a settlement was reached and the complainant was informed that his desired outcome is not possible. Allowing the continued debate and revisiting of this issue via the EIR would not be in the public interest.

46. The Commissioner is satisfied that if the Council was required to respond to this request it would place a significant burden on it in terms of time and expense and distract officials from addressing other matters. He considers that to require the Council to respond to this request would disrupt the everyday work of the Council, diverting a disproportionate amount of resources from its core business.

47. Considering the nature of previous correspondence and requests, the Commissioner has concluded that it is unlikely that any response to this request would satisfy the complainant. The previous pattern of behaviour clearly demonstrates that any response would more than likely lead to further requests for information and further lengthy correspondence asking for explanations and questions to be answered. These factors strengthen the public interest in maintaining this exception.

48. The Information Tribunal clearly stated in the case of *Mr A Welsh v Information Commissioner (EA/2007/0088)* that the legislation should not be brought into disrepute by setting the threshold for vexatiousness too high. Specifically, the tribunal found that:

"... there is a danger that setting the standard of vexatiousness too high will diminish public respect for the principles of free access to information held by public authorities enshrined in FOIA. There must be a limit to the number of times public authorities can be required to

revisit issues that have already been authoritatively determined simply because some piece of as yet undisclosed information can be identified and requested…" (Paragraph 26).

49. In view of the above, the Commissioner has decided that in the circumstances of this case the public interest in maintaining the exception outweighs the public interest in disclosing the information.

The Decision

50. The Commissioner's decision is that the Council dealt with the request for information in accordance with the Act and acted appropriately by applying regulation 12(4)(b) to this request.

Right of Appeal

51. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 15th day of September 2010

Signed ……

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Legal Annex

Environmental Information Regulations 2004

Regulation 12(1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if –

(a) an exception to disclosure applies under paragraphs (4) or (5); and
(b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

Regulation 12(2) A public authority shall apply a presumption in favour of disclosure.

Regulation 12(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –

(a) it does not hold that information when an applicant's request is received;
(b) the request for information is manifestly unreasonable;
(c) the request for information is formulated in too general a manner and the public authority has complied with regulation 9;
(d) the request relates to material which is still in course of completion, to unfinished documents or to incomplete data; or
(e) the request involves the disclosure of internal communications.