Freedom of Information Act 2000 (Section 50)
Environmental Information Regulations 2004

Decision Notice

Date: 19 October 2010

Public Authority: Wendover Parish Council
Address: The Clock Tower
High Street
Wendover
Aylesbury
Buckinghamshire
HP22 6DU

Summary

The complainant requested various items of information from Wendover Parish Council ("the Council") concerning a market held on an area of land known as "the Manor Waste". The Information Commissioner ("the Commissioner") has numbered these requests from 1 to 4. Although the Council originally chose to respond to the requests, it subsequently advised the Commissioner that it had decided to refuse the requests on the basis that they were vexatious under section 14(1) of the Freedom of Information Act 2000 ("the FOIA"). The Commissioner decided that the requests should have been handled under the terms of the Environmental Information Regulations 2004 ("the EIR") and he therefore considered whether regulation 12(4)(b) was engaged. Ultimately, the Commissioner did not consider that the Council presented sufficient arguments in support of its claim that the requests were manifestly unreasonable. He therefore requires the Council to respond to the requests under the EIR. The Commissioner found breaches of regulation 14(2), 14(3) and 14(5).

The Commissioner's Role

1. The 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 Commissioner. In effect, the enforcement provisions of Part 4 of the FOIA are imported into the EIR.

Background

2. A market is held in Wendover on an area of land known as "the Manor Waste". This is a thin strip of land consisting of cobbles. The complainant, who is the director of a company operating a store near to the market, has been in contact with the Council since December 2008 about various issues connected to the market. The complainant's primary concern is that the market is preventing reasonable access to the store because, in his view, the Council is not managing the market properly and fairly. The four requests forming the subject of this complaint are clearly connected to this underlying issue. At the time of the request, the Council had a contract with the market traders allowing the market to operate on the Manor Waste for which the market traders paid the Council a sum of money. The Commissioner understands that the contract has now been renegotiated. One of the requests forming the subject of this complaint is for a copy of the contract that existed at the time.

The Request

3. For clarity, the correspondence referred to below also dealt with other requests. The Commissioner has only highlighted below the parts of the correspondence that are relevant to this complaint.

4. On 26 October 2009, the complainant wrote to the Council (a copy of this letter has not been provided to the Commissioner but an annex to it has been). This listed the following requests that are relevant to this complaint:

- "A copy of the Market Agreement" (request 1)
- "Copies of Market Traders Public Liability Certificates" (request 2)
- "Documentation to support ownership/ right to hold a market on the public footpath or a clear written statement confirming no ownership or right…" (request 3)
- "Documentation to support ownership/ right for market traders to store equipment on my property (thin strip of land in front of windows) or a clear written statement withdrawing such claims" (request 4)

5. On 2 November 2009, the Council replied. It stated that the market agreement was exempt under section 43 of the FOIA in respect of request 1. For clarity, the same request had been made by the

complainant on 1 June 2009 and had been refused under section 43 by the Council on 18 August 2009. The Council did not explain why the exemption applied and it failed to address the public interest test associated with this exemption.

6. The Council also responded to request 2. For clarity, this information had already been requested on 5 July 2009 and 30 September 2009 but it appears that this letter represented the Council's first response to this request. The Council stated that the information was "not held at this office".

7. The Council also responded to request 3. For clarity, this request was substantially similar to a request made on 1 June 2009. It is not clear to the Commissioner whether any response was issued to that request. In respect of request 3, the Council stated the following:

"The public footpath only extends around the edge of the Manor Waste and not anywhere else across it".

8. In respect of request 4, it appears that this represented the first time that the request was made. The Council responded as follows:

"Documentation to support ownership/right for market traders to store equipment on your property – The thin strip of land between the brick columns in front of the windows, on the front of the [name of store]'s property is not the property of Wendover Parish Council. Wendover Parish Council's property starts from the face of the bricks. Wendover Parish Council has given the market traders rights to store equipment on Wendover Parish Council's property for the duration of the market".

9. The Commissioner asked the Council whether it had received a request for an internal review after the response on 2 November 2009 and if so, whether it had carried one out. The Council stated that it had not received a request for an internal review following this response.

The Investigation

Validity of the complaint

10. In this case, the history of the correspondence was not initially clear, compounded by the repetitive nature of the requests and the fact that the Council had not clearly offered an internal review or identified any of the correspondence as representing an internal review. The Commissioner accepted the complaint believing that an internal review had been carried out in respect of all the requests. It is now apparent

that this was incorrect. In this case, the Commissioner has investigated the complaint in view of the initial difficulties described but he would like to make it clear that in general, the Commissioner would expect to see evidence that a public authority has carried out an internal review where a requester is dissatisfied with the response received. Under FOIA, if a public authority does not offer internal reviews, it should state this in its response. However, under the EIR, it is mandatory for a public authority to carry out an internal review.

Scope of the case

11. On 16 November 2009, the complainant contacted the Commissioner to complain about the way his requests for information had been handled. As the nature of the complainant's complaints in respect of each request was not clear from this correspondence, the Commissioner subsequently clarified with the complainant that he wished the Commissioner to consider the Council's response dated 2 November 2009. He confirmed that the complainant wished him to consider whether the Council had correctly refused to provide the information requested in request 1 using the exemption under section 43(2) and whether it held any information that it had not provided to him in response to requests 2, 3 and 4.

12. For clarity, in respect of request 3 and 4, the complainant agreed to withdraw his request for a "written statement" from the Council as the Commissioner explained that the FOIA only applied to recorded information that was held by a public authority at the time of a request and did not extend to requiring the public authority to make statements. Also in respect of request 4, the complainant agreed to withdraw his request for documents to "support ownership" of what he described as "his property" as the Commissioner pointed out that it was obviously apparent that the Council did not own this property.

13. The Commissioner subsequently explained to the complainant that the Council was relying on regulation 12(4)(b) and explained that he would investigate this position.

Chronology

14. Following a standard letter from the Commissioner on 6 January 2010, the Council wrote to the Commissioner on 8 January 2010. The Council stated that the information had been refused under section 43 and it stated that it had also applied section 14(1). It provided a copy of the withheld contract to the Commissioner. This was the first time that it became apparent to the Commissioner that the Council was relying on section 14(1). The Council presented some limited arguments and

evidence in support of section 14(1) including a copy of its own internal vexatious complaints procedure.

15. On 11 February 2010, the Commissioner contacted the complainant. He asked for some clarification regarding the nature of his complaints. The complainant replied on 15 February 2010.

16. On 22 February 2010, the Commissioner wrote to the Council. The Commissioner expressed the view that he felt it was likely that the requests should have been considered under the EIR rather than the FOIA. However, the Commissioner explained that if a request was vexatious, regulation 12(4)(b) would be engaged. He pointed out however that unlike section 14(1), this regulation is subject to a public interest test. The Commissioner stated that he assumed the Council would wish to rely on this regulation in the alternative in relation to the four requests and if that was the case, it should respond to the Commissioner's standard questions concerning vexatious/manifestly unreasonable requests as set out in his guidance. The Commissioner also indicated that he was not yet convinced on the strength of the arguments presented so far that the request was manifestly unreasonable.

17. The Council replied to the Commissioner on 29 March 2010. It presented some arguments in line with the Commissioner's guidance on vexatious and manifestly unreasonable requests. It also explained that it was of the view that the public interest in maintaining the exception under regulation 12(4)(b) was greater than the public interest in responding. It provided a separate bundle of documents consisting of correspondence between itself and the complainant in connection with issues regarding the market dating from December 2008.

18. On 12 April 2010, the Commissioner wrote to the Council and explained that he was still not convinced that regulation 12(4)(b) had been correctly applied in the circumstances of this case. He asked for further supporting arguments from the Council and clarification regarding the requests.

19. On the same date, the Commissioner provided an update to the complainant. He explained that the Council was relying on the exception under regulation 12(4)(b).

20. The Council advised the Commissioner that it had not received the correspondence dated 12 April 2010 and a further copy was provided to it on 29 April 2010.

21. The Council replied on 12 May 2010. In this letter, the Council referred to the fact that in the "spirit of FOI", it had actually responded to the requests initially. It also stated that the only recorded information it held that had not been provided was the market agreement. It went on to make some further supporting arguments in line with the Commissioner's guidance.

22. On 18 May 2010, the Commissioner wrote to the complainant seeking some further clarification regarding the requests. He also asked the complainant to present any arguments he wished to make opposing the Council's claims that the requests were manifestly unreasonable.

23. The complainant replied on 25 May 2010 providing some clarification. The complainant also outlined why, in his view, the requests were not manifestly unreasonable.

24. On 7 June 2010, the Commissioner wrote to the Council asking for further clarification regarding the requests. The Commissioner also asked for some more supporting arguments as he remained unconvinced that the exception had been correctly applied.

25. In a letter that was incorrectly dated 12 May 2010 (received by the Commissioner on 22 June 2010), the Council provided further supporting arguments and copies of correspondence between itself and the complainant.

Analysis

Substantive Procedural Matters

Should the requests have been handled under the EIR?

26. The Commissioner's view is that the requests should have been considered under the EIR. This is because all of the requests clearly concern the market held on the Manor Waste and a market is, in the Commissioner's view, an activity that is likely to affect at least one of the elements and factors listed in regulation 2(1)(a) and (b). In particular he considers that the market is likely to affect the land and is likely to create noise. In view of this, the Commissioner considers that the requests for information relating to the holding of the market are requests for information on an activity likely to affect the environment. As such, the requests fall under the scope of regulation 2(1)(c) and may be described as requests for "environmental information".

Regulation 12(4)(b) – manifestly unreasonable requests

27. Regulation 12(4)(b) provides that public authorities may refuse to comply with a request for information if it is manifestly unreasonable. In line with the Commissioner's published guidance[1], when considering whether a request is manifestly unreasonable, the Commissioner considers the following questions:

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

28. It is not necessary for all of the above criteria to be met however in general, the more criteria that apply, the stronger the case for arguing that a request is manifestly unreasonable. It is also the case that some arguments will naturally fall under more than one heading.

29. When the Commissioner posed the above questions to the Council, in its reply on 29 March 2010, the Council stated that its answer was "yes" in relation to all the questions. In view of this, all the questions have been considered by the Commissioner below.

30. For clarity, the Commissioner considered the circumstances up until the date of the Council's response to the requests (2 November 2009).

Could the requests fairly be seen as obsessive?

31. For the reasons set out below, the Commissioner was not satisfied that the requests could fairly be seen as obsessive.

32. The Council explained to the Commissioner that there had been a reasonably long history of difficult encounters between itself and the complainant regarding the market dating back to his first contact in December 2008. It was clear from the Council's description of the background that it felt that the complainant had gone beyond what could be considered as a reasonable pursuit of the issues that concerned him. As outlined in the Commissioner's published guidance, public authorities can take account of the context and history of a

[1] http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/vexatious_and_repeated_requests.pdf

request when deciding whether it is manifestly unreasonable or vexatious. The guidance states the following:

"A request may not be vexatious in isolation, but when considered in context (for example if it is the latest in a long series of overlapping requests or other correspondence) it may form part of a wider pattern of behaviour that makes it vexatious".

33. The Council provided a bundle of correspondence between itself and the complainant to illustrate the history of correspondence about the market. It referred to an incident that it believed represented the start of the complainant's background grievance. It explained that in December 2008, the complainant had invested in particular produce at the store because he had been informed by a market trader that a particular stall would not be attending on a certain day. However, a number of other market traders were selling the produce and this resulted in the complainant making a financial loss.

34. The Council explained that the requests were part of a pattern of multiple requests that had been made about the market since the incident in December 2008. It explained that staff and councillors had been in contact with the complainant over this period of time and had tried, to the best of their ability, to resolve the complainant's various issues and to answer his information requests. It also referred to the fact that it had initially responded to the requests but the complainant had remained dissatisfied.

35. To help the Commissioner to consider the pattern of requests regarding the market, the Commissioner also asked the Council to compile a table with the date of each request made by the complainant concerning the market including a brief description of the request and how the Council responded. Unfortunately, the Council did not compile the requested table. The Commissioner saw evidence of a few other information requests regarding the market in the bundle of correspondence provided by the Council. He also notes that it is clear that the Council had provided some information although, as described, because the Council did not provide the information requested by the Commissioner, he was unable to determine whether these responses were of sufficient quality.

36. As well as the information requests themselves, the Commissioner considered the amount of correspondence sent to the Council by the complainant about the market up until the time of the requests in question. The Commissioner notes from the bundle provided by the Council that the complainant had been in regular contact during 2009 with the Council about the market. In addition, the Commissioner

notes that the complainant raised a variety of issues concerning the market in his correspondence.

37. The Commissioner noted that it is clearly the case that the complainant's requests and other correspondence were motivated by his unhappiness with the way the Council had dealt with his complaints about the market. The Commissioner asked the Council to outline in detail the concerns that had been expressed by the complainant to the Council and what the Council's response to those concerns had been. The Commissioner also asked the Council to outline what, if any responsibilities or obligations it has in respect of the market. Unfortunately, when the Council responded to the Commissioner, it did not outline these details.

38. The Council also argued that the fact that the complainant had involved other organisations was part of an obsessive pattern of behaviour. Referring to the incident in December 2008 concerning the over-ordering of stock, the Council stated the following:

"Since this incident, [complainant's name] has endeavoured to upset the market traders by many means. The County Council has been brought in to measure distances from pavements, Environmental Health to check traders, the police to check legality, Land Registry to check market charters, District Council on planning allowances and market regulations. His complaints have been written and verbal, many referred to in conversations with other authorities mentioned above…it is believed that [complainant's name] will only be happy once this ancient market no longer takes place".

39. The Commissioner asked the Council to be more specific about what activity there had been regarding the market involving the complainant and other organisations. The Commissioner asked the Council to describe the nature of the issue, the outcome and the dates so that the Commissioner could consider their relevance. When the Council replied it did not provide all the details requested. The Council provided limited details that did not even extend to all the organisations listed in its previous response. Without relevant dates, it was also not clear to the Commissioner whether all the matters mentioned were relevant at the time of the requests. The Council provided the following information regarding the complainant's contact with other organisations:

- The complainant had asked Buckinghamshire County Council to prevent one large stall taking up the pavement. The Council explained that the outcome was that Buckinghamshire County Council was prepared to let the stall use half the pavement for one day of the

market. The Council stated it received a phone call and a visit from Buckinghamshire County Council regarding this issue.

- The Council had received an email from its insurers regarding its risk reviews and inspection of the area.

- Aylesbury Vale District Council contacted the Council querying every event being held in the area that might be considered to be a market (legally more than 4 stalls). Aylesbury Vale District Council was also in contact with the Council regarding market management.

40. The Commissioner also asked the complainant about his contact with other organisations about the market. The complainant responded with the following comments:

"I have written to WPC's insurance company pointing out the hazards on the site and I have received an acknowledgement. I have written to Bucks County Council and Aylesbury Vale District Council about these issues and both have said they will investigate, but no outcome yet. I have made a complaint to the police about an assault, threats to customers and illegally blocking a fire exit, all by one employee of WPC. The police are still investigating. I have complained to the Chamber of Trade and they support my objections in principal but they do not have powers to take any action. I withdrew my objection in 2009 to the WPC registering with the Land Registry, ownership of the area disputed, on an assurance from WPC that they would respect my rights of access".

41. The Commissioner notes that the Council has also indicated that it believes that the complainant will not be satisfied until the market is closed down. No specific evidence was highlighted by the Council to support this assertion.

42. Weighing all the above factors in the balance, the Commissioner decided that he had not been presented with sufficiently persuasive arguments to allow him to find that the complainant's requests were obsessive. He has set out his reasons below.

43. The Council did not outline, when requested, the details and dates of the complainant's requests about the market. However, when the Commissioner tried to find evidence of other requests himself, he did not consider that those requests he was able to identify clearly illustrated a pattern of obsessive requests. He notes in particular that even when taken together with the requests that form the subject of this complaint, they were relatively small in number and do not generally focus on tendentious or unduly repetitive issues but appear

to be genuine attempts to understand the Council's responsibilities and actions it had taken in respect of the market.

44. Regarding the correspondence that formed the wider context of the information requests, although the Commissioner notes that the correspondence raised a variety of concerns, the Commissioner did not consider that this in itself is illustrative of an obsessive approach. It appears to the Commissioner that the complainant simply had a variety of concerns regarding the operation of the market and the impact it was having on his store in particular. He notes that there was regular contact from the complainant over the period of time in question but in the main, it appears that this represented part of an exchange with the Council about issues which were very important to the complainant and which were not easy to resolve.

45. The Commissioner was also not presented with clear arguments concerning what action the Council had taken, or could take, in respect of the market. It is clear from the evidence presented that the Council has sent some detailed correspondence to the complainant in an attempt to address his concerns, however, the Commissioner notes that the Council did not clarify, when asked by the Commissioner, precisely what its responsibilities were in respect of the market and what assistance it could give or had given to the complainant. The Commissioner notes that it appears that the Council has generally taken the line in correspondence with the complainant that the responsibility for dealing with market issues does not rest with it. However, the Commissioner notes in particular that the Council has refused to be transparent about the terms of its contract with the market traders which is one of the requests that is the subject of this complaint. Further, given that the Council is responsible for renewing the market's contract, the Commissioner considers that it is likely that it would be open to the Council to become involved in the market's operation where that may be a matter of concern to residents of the area.

46. Further, the Council did not illustrate how the complainant's contact with other organisations meant that his requests should be regarded as manifestly unreasonable in this case. If it is not clear what action the Council could take in respect of the market, it seems understandable that the complainant would make enquiries with other bodies.

Were the requests harassing the authority or causing distress to staff?

47. For the reasons set out below, the Commissioner was not satisfied that the Council had properly demonstrated that the requests were harassing to the authority or causing distress to staff.

48. The Commissioner should explain from the outset that the test in this part of the criteria is concerned with the effect of the requests rather than the complainant's intention. However, it should also be noted that the test is an objective one. The standard to be applied is whether a reasonable authority would consider the requests to be harassing or distressing.

49. The Council initially explained that it felt that the complainant was motivated by a desire to obtain information that he could use to harass the market traders and influence the contract process. It provided a copy of a letter to the Commissioner dated 5 July 2009 from the complainant to the Parish Chairman in which the Council stated the complainant had implied that he intended to harass the traders and influence the contract process. However, when the Commissioner read this letter, he did not see evidence of such an implication. It was also not clear why a desire to obtain information in order to influence the contract process was manifestly unreasonable.

50. The Council also supplied a copy of a letter from a solicitor it had instructed to deal with the complainant. The date of this letter was unclear. The letter warned the complainant that if the complainant continued in his behaviour, this would be likely to amount to harassment under the Protection from Harassment Act 1997. It stated that the solicitor was very concerned to note that "it is [the complainant's] clearly stated intention to continue [his] obstructive and harassing approach towards the Parish Council and its officers". The solicitor alleged that this had taken place in a meeting between the Council and the complainant on 8 October 2009. However, no record of this meeting was provided and there was no independent evidence. It could be that any comments made had been misinterpreted. The Commissioner also noted that the Council did not highlight evidence that showed that it had put the complainant on notice, prior to 2 November 2009, that it may find further requests on the subject of the market vexatious or that it had asked the complainant to moderate his behaviour. The first time that the Council raised the issue of vexatious behaviour with the complainant appears to have been in a letter dated 5 November 2009 which was supplied to the Commissioner by the complainant.

51. For the reasons outlined above, the Commissioner was not persuaded that any of the requests were obsessive and the same arguments support an outcome that the requests were not harassing. Having inspected the correspondence and the requests themselves, the Commissioner could not see evidence of a clearly harassing approach. Indeed, the Council itself conceded in a letter to the Commissioner dated 29 March 2010, that it did not consider that the complainant was harassing the authority directly. Rather it felt that he was harassing the market traders and intended to disrupt their businesses. This clearly contradicts the statement made in its solicitor's letter to the complainant that the requests were harassing the Council's staff.

52. The Council did not draw the Commissioner's attention to any harassing tone in the correspondence. Instead, it sought to rely on matters that had taken place verbally. It referred to one incident where it claims that the complainant blocked the Manor Waste with his car and other items to prevent the market traders setting up. It stated that this took place on 2 October 2009. When the Commissioner asked for further details of this issue or any other events that had taken place verbally, the Council did not provide them. The Council did initially offer to obtain signed statements on the issues however in its final letter to the Commissioner the Council stated that as the relevant staff members no longer worked for the Council, it was not able to provide further details.

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

53. For the reasons set out below, the Commissioner considered that complying with the requests, when viewed in the context of other requests and correspondence from the complainant, may have imposed a significant burden on the Council in terms of distraction if not expense.

54. The Commissioner notes that the Council had responded to the requests prior to engaging regulation 12(4)(b). The nature of these responses does not indicate to the Commissioner that complying with the requests imposed a significant burden in terms of expense and distraction in isolation. However, the Commissioner has also considered the context in which the requests were made.

55. The Commissioner is mindful of the fact that the authority in question is a small parish council and in general, parish councils have fewer resources in place to help them to manage the issues in the area. The Commissioner therefore appreciates that in view of the limited resources available to it, it is likely that the correspondence and requests submitted by the complainant did collectively represent a

significant burden, at least in terms of distraction. The Commissioner also notes that the burden would have been increased by the complainant's contact with other bodies and the variety of detailed concerns he has raised. When asked specifically about expense, the Council referred to the expense of instructing a solicitor. The Commissioner has not taken this into account because it was the Council's choice to instruct a solicitor and it appears that this took place after the Council's response on 2 November 2009.

Were the requests designed to cause annoyance and disruption?

56. For the reasons set out below, the Commissioner was not satisfied that the requests were designed to cause annoyance and disruption.

57. As already mentioned in paragraph 49 of this Notice, the Council presented a letter to the Commissioner that it claimed contained evidence of the complainant's intention to harass the Council. However, when the Commissioner inspected this, no such intention was apparent. When the Commissioner specifically invited the Council to point out where in the letter the intention was apparent, the Council failed to do so. Further, the Commissioner asked the Council on more than one occasion in this investigation to provide supporting evidence that the complainant had made his intention to harass the Council plain. Although it briefly referred to events that had taken place verbally, it failed to outline in any detail precisely what was said. The Commissioner considers that a lack of clear evidence is problematic because it could be that any comments made were misinterpreted. For this reason, the Commissioner has not given weight to the comments made by the Council's solicitor in its letter to the complainant mentioned in paragraph 50 of this Notice.

Did the requests lack any serious purpose or value?

58. For the reasons set out below, the Commissioner was not satisfied that the requests lacked any serious purpose or value.

59. Firstly, the Council did not draw the Commissioner's attention to evidence that it had previously clearly addressed the issues that the requests raised or responded to other requests of the same or similar nature.

60. Secondly, when viewed in the wider context, it is the Commissioner's view that the general lack of transparency and clarity concerning the Council's responsibilities in respect of the market supports the case that the requests did not lack serious purpose or value. This is particularly so in respect of the request for a copy of the contract. The

complainant has explained to the Commissioner that his requests were motivated by a genuine desire to understand the Council's responsibilities and there is no clear evidence available to the Commissioner suggesting that this was not the case.

Were the requests manifestly unreasonable?

61. As described above, the Commissioner's view in this case is that the public authority did not provide sufficiently persuasive arguments to convince the Commissioner that the requests were obsessive, harassing or distressing to its staff, designed to cause annoyance or disruption or had no serious purpose or value. Although the Commissioner accepts that because this case concerns a parish council, the nature of the correspondence about the market may have been a significant burden on the public authority's resources in terms of distraction, he does not consider that this factor alone is enough to deem any of the requests manifestly unreasonable given the other circumstances of this case.

62. The Commissioner appreciates that there is often a thin line between being persistent and being vexatious and he understands that in some cases this can be a difficult judgement to make, especially in cases where requests are clearly linked to a background issue that is difficult to resolve. There must be a limit to the amount of times a public authority can be expected to revisit issues relating to a particular grievance. However in the circumstances the Commissioner felt that the Council had not demonstrated that it had correctly determined where the balance rested in this case. While it is not for the Commissioner to address the merits of the complainant's complaints, he has had particular regard to the fact that the market has the potential to have a detrimental impact on the success or otherwise of the complainant's business and this has clearly been distressing to him. The Commissioner has also had particular regard to the fact that it has not been made clear to either the complainant or the Commissioner, precisely what responsibilities the Council has in respect of the market.

63. Although on this occasion, the Commissioner believes that the Council incorrectly judged that the requests were manifestly unreasonable, the Commissioner would like to make it clear that his decision only relates to the requests that have formed the subject of this complaint and not to any future requests that may be made.

Procedural Requirements

64. The Council did not rely on the exception under regulation 12(4)(b) when it initially responded to the requests. This represented a breach

of regulations 14(2) and 14(3) because the Council failed to issue a valid refusal under the EIR within 20 working days or by the date of an internal review.

65. The Commissioner also notes that the Council failed to refer to the complainant's right to make representations to the Council under regulation 11 of the EIR and of the right to appeal to the Commissioner when it issued its refusal notice on 2 November 2009. This represented a breach of regulation 14(5).

The Decision

66. The Commissioner's decision is that the public authority did not deal with the requests for information in accordance with the EIR.

- It incorrectly determined that the requests were manifestly unreasonable in accordance with regulation 12(4)(b) of the EIR.
- As the Council did not deal with the requests under the EIR, it breached regulations 14(2) and 14(3) for failing to issue a refusal notice relying on regulation 12(4)(b) within 20 working days of the requests or by the date of any internal review.
- As the Council failed to refer to the complainant's right to make representations under regulation 11 of the EIR or the right to appeal to the Commissioner, it breached regulation 14(5).

Steps Required

67. The Commissioner requires the public authority to take the following steps to ensure compliance with the EIR:

- The Council must respond to the four requests set out in paragraph 4 of this Notice in accordance with the EIR. It should note that *parts* of requests 3 and 4 have been withdrawn as described in paragraph 12 of this Notice. It should consider the recorded information that it held at the time of the requests and address each request separately. If information was held, it should supply it directly to the complainant or apply one of the exceptions listed in regulation 12 of the EIR other than regulation 12(4)(b). If information was not held, the Council should note that it will need to cite regulation 12(4)(a) of the EIR.

68. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

69. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Other matters

70. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

- Under regulation 11 of the EIR, a complaints procedure for considering complaints about the handling of information requests is mandatory. The Commissioner recommends that the Council considers his published guidance on internal reviews available at www.ico.gov.uk.

Right of Appeal

71. 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 19th day of October 2010

Signed ……

Anne Jones
Assistant Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Legal Annex – The Environmental Information Regulations 2004

Regulation 2 - Interpretation

Regulation 2(1) In these Regulations –

"environmental information" has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on –

(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;

Regulation 5 - Duty to make available environmental information on request

Regulation 5(1) Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

Regulation 5(2) Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.

Regulation 11 - Representation and reconsideration

Regulation 11(1) Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant's request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request.

Regulation 12 - Exceptions to the duty to disclose environmental information

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(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;

Regulation 14 - Refusal to disclose information

Regulation 14(1) If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.

Regulation 14(2) The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.

Regulation 14(3) The refusal shall specify the reasons not to disclose the information requested, including –

(a) any exception relied on under regulations 12(4), 12(5) or 13; and
(b) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b)or, where these apply, regulations 13(2)(a)(ii) or 13(3).

Regulation 14(5) The refusal shall inform the applicant –

(a) that he may make representations to the public authority under regulation 11; and
(b) of the enforcement and appeal provisions of the Act applied by regulation 18.