

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

Decision Notice

Date: 20 December 2011

Public Authority: Isle of Anglesey County Council
Address: Council Offices
Llangefni
Anglesey
LL77 7TW

Summary

The complainant made a multipart request to the Council relating to various issues surrounding planning activities, and surrounding the activities of a named official. The Council considered that parts of the request related to environmental information and were therefore considered under the EIR, whilst other parts of the request were not for environmental information and therefore considered under the Act. The Council refused to comply with the request on the basis that it was vexatious under section 14(1) of the Act, that it would exceed the "appropriate limit" set out at section 12(1) of the Act, and that it was manifestly unreasonable, in line with regulation 12(4)(b) of the EIR. The Commissioner has investigated and has found that the Council correctly applied the exception at regulation 12(4)(b) of the EIR to the environmental information, and that it correctly relied on section 12(1) of the Act in refusing to comply with the non-environmental elements of the request. The Commissioner requires no steps to be taken.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.
2. 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

3. The request which is the subject of this decision notice was made by the complainant on 6 January 2011. However, it should be noted that this request forms part of a wider set of correspondence between the complainant and the Council. The Commissioner has investigated an earlier request for information¹ which focused on similar subjects, and the wording used in the request of 6 January 2011 demonstrates that it directly follows the Council's response to the earlier information request, and that this new request is seeking to expand on the complainant's earlier questions to the Council.

The Request

4. On 6 January 2011 the complainant wrote to the Council and made the following request for information:

"I would like to make another series of FoI requests.

(1) In your FoI response of 26 October 2010 you wrote of an "investigation into planning matters recently concluded by an external independent authority". Can you tell me the name of the second person whose application was examined?

(2) Just to be clear, can you confirm that there has been no other review into [named official]'s activities? Say, in the past five years?

(3) I would also like you to explain the apparent contradiction between your 26 October comments:

"The Council does not hold information about an investigation into [named official]. However you may be referring to an investigation into Planning matters recently conducted by an external independent authority."

"You [sic] request is phrased in terms which suggest that the investigation is centred on [named official]. I do not concur with your view because it is apparent that the focus of the

¹ FS50365275

investigation has been the systems and procedures employed by the Council in respect of planning applications submitted by two separate individuals."

And this statement by [named individual] in his Ombudsman complaint about [named individual] of 5 August 2010 [par 1.6]:

"[named official] has been the subject of unfair criticism by a small number of county councillors. In response to certain allegations about [them], most of which are not directly connected with this complaint, I took the unusual step of commissioning a peer review of [their] work by a former Monitoring Officer and Chief Executive."

There's a huge gap between a "peer review of [their] work" and a planning application by [them] which makes an appearance in an investigation into planning "systems and procedures".

[...]

(4) Could I have a copy of the Eversheds report into the appointment of the [job title of named official] back in the mid-2000s? The post eventually went to [named official].

(5) Could I have a copy of all [named individual]'s reports, minutes, correspondence and advice relating to [named official]'s reserved matters application on [named application] in 2003?

(6) Could I have a copy of all reports, minutes, correspondence and advice relating to the [named application] prepared by the planning department, the highways department and [named official] or [their] department?

(7) Did [named official] make a formal declaration in relation to this planning application either in 2001, 2003 or subsequently?

(8) Which council officer or officers took the decision to deal with the reserved matters under delegated powers in 2003? Could I have a copy of all reports, minutes, correspondence and advice concerning the decision to deal with this matter under delegated powers?

(9) Could I have a list of all Ombudsman complaints submitted by members of the current CMT and [named official] regardless of outcomes? In the case of [named official], the list should also cover her period as [job title of named official].

(10) Could I have a copy of all reports, correspondence and advice from [named official] and the legal department relating to the planning

"departure" issue between 2004 and the end of 2007? This should include correspondence with the external auditors and the Wales Audit Office.

(11) Could I have copies of the two PWC reports on [named development]? I had these while I was at [named organisation] but I would like copies for my own records.

(12) Could I have copies of all reports, correspondence and advice from [named official] and legal department relating to [named development]?

(13) Could I have copies of all reports, correspondence and advice of all legal advice from [named official]/Legal Department re the purchase of [named development]?

(14) Could I have copies of all reports, correspondence and advice of all advice from external legal advisers re [named development]?

For the avoidance of doubt, this last request covers the draft reports sent to the council in October 2007 and July 2008 and which include references to [named development].

(15) Did the council contact counsel in relation these reports [sic]? Could I have copies of all reports, minutes, correspondence and advice to or from that counsel?

(16) Could I have the two draft copies of the external auditors' draft reports, which included sections on [named development], sent to the authority in October 2007 and July 2008.

(17) Could I have copies of all reports, correspondence and advice of all legal advice from [named official]/Legal Department and any external advisors relating to the CMT's decision to withhold these documents from the Executive?"

5. The Council responded on 2 February 2011. The Council explained that information falling within the scope of part 1 of the request was exempt from disclosure by virtue of section 40(2) of the Act and regulation 13 of the EIR. In respect of elements 2 and 3 of the request, the Council apologised for any contradiction and confusion, and confirmed that it had misread the context of the request. More generally, the Council explained that due to the large number of questions being asked, the time involved in locating and extracting the information would exceed 18 hours – with a number of the elements in isolation being likely to exceed the cost limit under the Act. The Council explained that, in its view, the request exceeded the cost limit, and therefore it applied section 12(1) to the request. In addition, the Council explained that it was refusing

elements of the request with a focus on a named official under section 14(1) of the Act, and regulation 12(4)(b) of the EIR for those elements which constituted requests for environmental information.

6. The complainant wrote to the Council on 9 February 2011 to request an internal review of its handling of his request. The complainant's correspondence also asked for some further information based on the Council's responses of 2 February 2011.
7. The Council provided the outcome of its internal review on 14 March 2011, upholding the conclusions set out in its initial response of 2 February 2011.

The Investigation

Scope of the case

8. On 22 March 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the Council's handling of his request, and whether it had correctly applied the various exemptions under the Act and exceptions under the EIR. More specifically, the complainant wanted to challenge the Council's statement that his requests were vexatious and manifestly unreasonable.

Chronology

9. The Commissioner wrote to the Council on 27 June 2011 and requested copies of any information that had been withheld and further arguments to support the Council's application of the various exemptions under the Act and exceptions under the EIR.
10. The Council responded on 23 August 2011 and provided detailed submissions to support its application of sections 12 and 14(1) of the Act, and 12(4)(b) of the EIR. The Council was no longer relying on section 40(2) of the Act or regulation 13 of the EIR in withholding elements of the requested information.

Analysis

Substantive Procedural Matters

Correct Access Regime

Elements 5-6, 8, 10-14 and 16 of the request

11. Due to the number of parts to the request submitted by the complainant, the Council considered that some parts constituted requests for environmental information and should therefore have been considered under the EIR, whilst other parts did not constitute requests for environmental information, and therefore should have been considered under the Act. The Council applied sections 12(1) and 14(1) of the Act, and regulation 12(4)(b) of the EIR to various parts of the request. The Commissioner has therefore considered whether some, or all, of the requested information constitutes environmental information, and whether the Council correctly considered each part of the request under the correct access regime.
12. The Commissioner notes that the Council considered that nine parts of the information request were requests for environmental information, and therefore that these elements were considered by the Council under the EIR. These elements were parts 5, 6, 8, 10, 11, 12, 13, 14 and 16 of the request set out at paragraph 4 above.
13. The Commissioner notes that the parts of the request listed above relate broadly to planning and development matters. The Commissioner considers that the requested information would fall within the definition of environmental information set out at regulation 2(1)(c) of the EIR, for the reasons set out below. Regulation 2(1)(c) provides that:

“‘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 on –

(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”.

14. The factors referred to in (a) include:

“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”.

15. In coming to his view that these parts of the request are environmental, the Commissioner is mindful of the Council Directive 2003/4/EC which is implemented into UK law through the EIR. A principal intention of the Directive is to allow the participation of the public in environmental matters. The Commissioner therefore considers that the term “any information...on” in the definition of environmental information contained in regulation 2 should be interpreted widely. It will usually include information concerning, about or relating to measures, activities and factors likely to affect the state of the elements of the environment. In other words information that would inform the public about the element, measure etc under consideration and would therefore facilitate effective participation by the public in environmental decision making is likely to be environmental information.
16. The Commissioner is satisfied that information relating to planning and development falls within the definition of environmental information for the purposes of the regulations as provided in regulation 2(1)(c). The planning and development of land is a measure, as defined in regulation 2(1)(c), it is an activity likely to affect the elements and factors referred to in 2(1)(a), i.e. the land and landscape, and the requested information in question is “on” that measure.

Elements 1-4, 7, 9, 15 and 17 of the request

17. The Council therefore considered the remaining eight parts of the information request not to be environmental, and considered these parts of the request under the Act.
18. The Commissioner notes that these parts of the request broadly cover the following points:
 - The identity of an individual whose application was examined
 - Whether any further review had taken place into a named official's activities
 - An explanation of a contradiction between two comments made by the Council
 - A report into the appointment of a named official
 - An explanation of whether a named official made a formal declaration
 - A list of Ombudsman complaints submitted by individuals

- Counsel's advice in respect of various reports
 - Information relating to a decision to withhold certain documents from the Executive
19. The Commissioner does not consider that any of these parts of the request are "on" measures, activities and factors likely to affect the state of the elements of the environment. The Commissioner therefore considers that these parts of the request were correctly considered by the Council under the Act.
20. Having considered the nature of the requested information, the Commissioner is satisfied that the Council correctly considered each part of the request under the correct access regime. The Commissioner has therefore gone on to consider the Council's application of regulation 12(4)(b) of the EIR to elements 5-6, 8, 10-14 and 16 of the request, and has considered the Council's application of sections 12(1) and 14(1) of the Act to elements 1-4, 7, 9, 15 and 17 of the request.

Section 12

21. The Commissioner accepts that the elements of the request listed in paragraph 18 above did not constitute requests for environmental information, and therefore were correctly considered under the Act by the Council. The Commissioner has initially considered the Council's application of section 12(1) of the Act to these elements.
22. Section 12(1) of the Act provides that:
- "Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates the cost of complying with the request would exceed the appropriate limit".*
23. Accordingly, section 12 provides that a public authority is not obliged to comply with a request for information if it estimates that meeting the request would exceed the appropriate cost limit. The appropriate limit currently set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Regulations"), provide that the cost limit for non central government public authorities is £450. This must be calculated at the rate of £25 per hour, providing an effective time limit of 18 hours. A public authority may take into account the cost of locating, retrieving and extracting the requested information in performing its calculation. If a public authority estimates that complying with a request would exceed 18 hours or £450, section 12(1) provides that the request may be refused.
- (a) The issue surrounding what constitutes a reasonable estimate was considered in the Tribunal case *Alasdair Roberts v the Information*

Commissioner [EA/2008/0050] and the direction from that case is followed here.

24. The Council explained that it considered sections 12 and 14 of the Act to be equally applicable in this case.
25. The Council explained its reliance on section 12 of the Act due to the broad nature of the complainant's request, which consisted of a large number of sub-elements. A large proportion of the requested information is not held electronically, but in manual and un-indexed files. Some of the requested information has not been accessed for some years, which poses additional difficulties.
26. The Council explained that some requests pose specific challenges to the Council whose records are not held in conveniently entitled files arranged by subject. The relevant information may be held in a variety of files, reflecting the work practices of the solicitors and other officers at the relevant point in time. The Council gave the example of element 12 of the complainant's request, where the complainant has simply requested "all information" relating to a particular subject or issue.
27. The Council explained to the Commissioner that it had aggregated the eight requests in question in order to arrive at its decision that complying with the requests would exceed the appropriate limit. The Council explained that the eight questions had the named officer as their focus, either directly or indirectly in terms of that individual's professional activities. The eight requests share the general theme of that individual's appointment. The Council argued that the clear intended focus of the requests is the named individual in question.
28. Having considered the nature of the eight requests, and the general theme of correspondence received from the complainant, the Commissioner's view is that the requests have clearly been designed with a focus on the named officer. Indeed the Commissioner notes that a previous set of requests sent to the Council by the complainant on 22 September 2010 had the named officer as their clear focus (including a set of three specific requests under the heading "Investigation into [named officer]". Having viewed the flow of correspondence in context, it is clear that the complainant is focusing on the named officer and that this is clearly the theme of his requests for information from the Council. The Commissioner therefore considers that the Council is able to aggregate the eight non-environmental requests for the purposes of calculating the appropriate limit under section 12 of the Act.
29. The Commissioner has therefore gone on to consider the Council's application of section 12 of the Act to the aggregated requests. The Council explained that the complainant's requests relate to information

created over a considerable span of time, during which time different emphasis has been placed on the role of case management systems and manual files. The Council explained that its current record-keeping procedures may differ to previous practices, particularly as the role of information technology has increased. However, the Council attempted to provide the Commissioner with an explanation of the development of the current systems, and of why the Council considers complying with the aggregated requests would exceed the appropriate limit.

30. The Council explained that its legal department currently uses a legal case management system named IKEN. IKEN is arranged by 'matter' rather than files, which are the constituent parts of matters. The Council explained that, at the time of writing, the Legal Department had over 4000 matters open, and over 5000 closed. The Council explained that IKEN was introduced in 2004-2005, and the development of the system has taken place incrementally. Prior to the introduction of IKEN, files were arranged by file number on a system which has now been superseded. An electronic list of old file numbers is available, but the Council explained that it is not possible to undertake anything other than the most rudimentary of keyword searches from the descriptor field. Only one member of administrative staff is able to access the system.
31. The Council explained that files created by the named official – which were exclusively manual files – were not handled by administrative support staff.
32. The Council provided the Commissioner with a screen print to demonstrate that each matter is arranged by a system generated reference number, and a descriptor is usually attributed to the matter by the user. The Council explained that it is possible to search through matter titles and reference numbers, but that searches are limited to the text inserted into that field at the time the new matter was generated.
33. The Council explained that new IKEN matters are created when work commences on a new matter. A paper file is created, into which paper copies of correspondence, notes and other relevant information are placed. A corresponding electronic 'file' is also created, and the Council explained that current practice is to scan paper documents so that they are duplicated in the electronic file. However, the Council explained that this practice has only recently been established, and that prior to the current system, day-to-day work revolved around paper files.
34. The Council confirmed to the Commissioner that within the legal department, matters and their constituent files are arranged chronologically by their IKEN number. The user-generated descriptor given to the file is intended to identify the matter, but not intended to

provide an overview of the file's contents. The Council explained that letters are generally dictated and passed to administrative support staff who are advised as to which matter number the work belongs.

Therefore, there is no requirement for files to be arranged by subject matter. The Council confirmed that the files are not arranged by means of the subject about which the complainant has been enquiring – for example “Ombudsman complaints” or “investigations into planning matters”.

35. The Council sought advice from the administration supervisor of the legal department, who is responsible for the management and retrieval of information and records within the department, who provided the following information:

“given that the information is held on various files in different locations it would take at least 18 hours for two of my assistants to locate and retrieve the information. I cannot estimate how much further time would be required to extract the information”.

36. The Council went on to provide some further detail on the estimate of time that it would take to locate and retrieve the information requested. The Council explained that, in most instances, matters could be identified promptly using the search mechanisms in the IKEN system. However, the Council reminded the Commissioner that the practice of scanning paper documents into electronic files has only recently been established. The Council explained that working practice remains largely based around paper files belonging to specific matters. Therefore, in order to locate information about a matter, the paper file would have to be located. The Council explained that locating information relating to an old or closed matter is not as simple as determining its reference number and location.
37. The Council went on to explain that in addition to information held within the legal department, it was apparent that information would have to be sought from other Council departments, such as the planning department. These activities have not been factored in to the 18 hour estimate, so in reality the Council argued that the location and retrieval of information would take in excess of the 18 hours quoted by the legal department.
38. The estimate of 18 hours was based on a combination of previous work carried out by the Council and the results of searches undertaken on IKEN. The Council explained that the task of locating information in order to respond to similar requests has provided the administrative staff with an appreciation of the time involved. The Council explained that the actual amount of time spent responding to a previous request

about a specified planning matter was in excess of 60 hours of officer time.

39. Despite the Council's view, that locating and retrieving the requested information alone would exceed the appropriate limit, it went on to emphasise that considerable time would also be required to "extract and consider" the requested information as complying with the requests would be likely to require the examination of the public interest in respect of any qualified exemptions that may apply to the information. The Council recognised the principle that public authorities may not charge for redaction, but suggested that it was appropriate to charge for work that surrounded the process of extraction, determining whether information is relevant to a request, and whether it should be communicated to the applicant, arguing that this work would add substantially to the time estimate.
40. The Council did not undertake any further investigations. It explained that it was not practicable to undertake a sampling exercise because the information is held in a variety of hard-copy and electronic formats. The Council confirmed that the estimate set out at paragraph 35 above was based on the quickest method of gathering the requested information, and that, where possible, the estimate was based on searches of databases of files and the Department's case management system. The Council pointed out that the difficulties with providing relevant information to comply with this request were not caused by a lack of robustness in the Council's information management systems, but rather as a result of the magnitude of the current requests.
41. The Commissioner has considered the nature of the complainant's information requests and the arguments provided by the Council in support of its application of section 12 of the Act to the request. The Commissioner notes that eight of the complainant's 17 elements of the request were considered by the Council under the Act. These elements were parts 1, 2, 3, 4, 7, 9, 15 and 17 of the request set out at paragraph 4 above.
42. The Commissioner notes the broad nature of some of these elements, and considers the Council's arguments to be reasonable. The Commissioner notes in particular the wording of the requests, which will not allow the Council to quickly locate specific information sought by the complainant, and also notes the fact that some of the complainant's requests are seeking information dating back to 2001. From the explanation provided by the Council it is clear that information falling within the scope of these requests could span many different filing systems, across various departments. The Commissioner considers that obtaining a more detailed estimate would be likely to be disproportionate; given the breadth of the request and the complexity of

the Council's records management systems; indeed the Commissioner considers that there is a possibility that estimating the cost of compliance could exceed the appropriate limit in itself.

43. The Commissioner is not persuaded by the Council's arguments at paragraph 39 above, in respect of the time that the consideration of the public interest would add to the estimate. However, due to the detailed descriptions of the Council's previous and current record keeping practices, and the evidence that the time taken to respond to one specific and narrow request was in excess of 60 hours, the Commissioner is persuaded that the location and extraction of the requested information alone, in respect of the eight aggregated requests, would exceed the appropriate limit.
44. The Commissioner accepts the explanation provided by the Council as to the actions required to comply with the request. He considers that the time and resource implications for the Council would be unreasonable if it was to comply with the initial request in the detail specified by the complainant. Therefore the Commissioner upholds the application of section 12(1) in relation to the aggregation of the eight requests. The Commissioner has therefore not gone on to consider the Council's determination that the non-environmental requests were vexatious, under section 14 of the Act.

Section 16 – Duty to provide advice and assistance

45. Section 16(1) provides that:

"It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it"

46. Section 16(2) provides that:

"Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case".

47. Where a public authority refuses a request because the appropriate limit has been exceeded, paragraph 14 of the section 45 Code of Practice on the discharge of public authorities' functions under Part I of the Act recommends that the public authority should consider providing an indication of what, if any, information could be provided within the appropriate limit, and also consider advising the applicant that a narrowed or refocused version of the request could be handled within the limit.

48. The Council explained to the Commissioner that the complainant appeared to concentrate his attention on the implication that he had been declared vexatious, finding it relevant that he had not sought to challenge the Council's reliance on section 12 of the Act.
49. The Council provided the Commissioner with correspondence received from the complainant which clearly focused on the issue of vexatiousness. The Council argued that the fact that it continued to respond to subsequent requests for information, and remained in dialogue with the complainant demonstrated its provision of advice and assistance to the complainant. The Council also provided the Commissioner with a copy of a letter sent by the Chief Executive to the complainant as further evidence of the ongoing dialogue. The text of the letter sought to address the complainant's concerns, and – as argued by the Council – should be viewed as evidence of the Council's attempts to offer advice and assistance to the complainant.
50. The Commissioner has considered the actions of the Council in the context of the voluminous correspondence between it and the complainant. It is clear that, despite being given clear explanations that compliance with the non environmental elements of the request would exceed the appropriate limit, the complainant has not engaged with the Council in dialogue about its application of section 12, instead focusing entirely on the "vexatious" quality of his request. Therefore, the Commissioner considers that the Council fulfilled the requirements of section 16(1) by attempting to enter into the provision of advice and assistance, but these attempts were blocked by the complainant's insistence on focussing on the matters relating to his "vexatious" request.

Exceptions

Regulation 12(4)(b)

51. Regulation 12(4)(b) states that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable. There is no definition of the term "manifestly unreasonable" but the Commissioner's view is that the word "manifestly" implies that a request should be obviously or clearly unreasonable. There should be no doubt as to whether the request was unreasonable.
52. The Commissioner recognises the similarities between section 14 of the Act and regulation 12(4)(b) of the EIR. In particular the Commissioner considers that a request that could be considered vexatious or repeated under the Act may well be manifestly unreasonable for the purposes of the EIR. However, whilst section 14 of the Act provides that a public authority can simply refuse to comply with a request it considers to be

vexatious or repeated, the same cannot be said for regulation 12(4)(b). regulation 12(4)(b) is an exception under the EIR and, if engaged, is subject to the public interest test at regulation 12(1)(b). The Commissioner is also mindful of the presumption in favour of disclosure at regulation 12(2).

53. The Commissioner issued awareness guidance entitled “vexatious or repeated requests” in December 2008 as a tool to assist in the consideration of when a request can be treated as vexatious. The guidance sets out the following key questions to consider:

- 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?
- Is the request designed to cause disruption or annoyance?
- Does the request lack any serious purpose or value?

54. The guidance indicates that an affirmative response to all of the questions is not necessary for a request to be deemed vexatious. However it states that to judge a request as vexatious, persuasive arguments should be made under more than one heading.

The Council's position

55. The Council provided the Commissioner with detailed arguments to support its findings that the parts of the request considered under the EIR were manifestly unreasonable.

- (a) In the Council's view, the amount of time involved in locating and extracting information relating to the nine parts of the request under consideration would exceed the cost limit set out under the Act. Whilst recognising that this, in itself, does not meet the definition of manifestly unreasonable under the EIR, the Council maintained that the cost of compliance with the requests was disproportionate to the importance of the issues, especially as compliance would divert resources in a manner which would be disruptive to the Council's normal activities.
- (b) The Council also maintained that the context and history of the requests would demonstrate their true effect, and that whilst the requests may appear, on face value, to be benign; that the context suggests they are obsessive, setting out to cause distress to staff, and also intended to cause annoyance.

- (c) The Council made reference to a close relationship between the complainant and a Councillor, explaining that the complainant tends to pursue similar issues to that Councillor. The Council explained that, in particular, both the complainant and Councillor have chosen to pursue issues relating to the Council's purchase of a property, and the planning history relating to the property belonging to the named official, despite the fact that the Council purchase of property has been thoroughly investigated at considerable cost, and that the full history of the named official's planning activities is publicly accessible to all on the planning file. The Council also explained that the Councillor in question is currently under investigation following a series of allegations against the named official.
- (d) The Council went on to explain that the close relationship mentioned in part (c) above is borne out by the fact that in his correspondence to the Council the complainant has quoted from a complaint to the Ombudsman which was provided to the Councillor on a confidential basis. The Council also provided a copy of an email from the complainant which demonstrates this vexatious behaviour.
- (e) The Council made reference to letters sent from the complainant to the Interim Managing Director and the named official, which clearly demonstrate the complainant's attitude towards the named official. The Commissioner was provided with a copy of a lengthy letter from the complainant to the named official. The Council stated that the complainant's assertion that this correspondence forms part of his research appears to be a veil masking the vexatious quality of his correspondence.
- (f) The Council stated that, in its view, the letters can be viewed as a personal assault on the professional competence and integrity of the named official, with the effect of this being to cause that individual considerable distress. The Council also made reference to the complainant's website, on which he has implied that the activities of the named official are in some way improper and could therefore be viewed as harmful to their reputation.
- (g) The Council made reference to a letter from the complainant dated 25 January 2011, which, in its view, was intended to cause annoyance to the recipient. The Council also stated that the letter's focus on the named official demonstrated the degree to which "gossip" had informed the complainant's view. The Council therefore suggested that the source of the information may have been the Councillor with whom the complainant shared a close relationship.

- (h) The Council explained that the complainant had previously attempted to gain access to a “peer review” of the actions of the named official². The Council also informed the Commissioner that the complainant had attempted to obtain this information through “unofficial channels” An internal Council letter demonstrated a suspicion that a small number of individuals may have been determined to resurrect the issues at hand, despite the findings of an independent investigation. The complainant, it seems, also attempted to obtain this information by contacting a former senior Council officer via his personal email address. The vexatious nature of the requests is further demonstrated in this email.
- (i) In respect of the activity described in subsection (h) above, the Council believes that the personal email address may have come into the complainant’s possession through unofficial means, and that the complainant may have utilised this data to “mass-mail” Council staff. The complainant’s email of 31 May 2010 addressed “Dear Council Employee” includes the following: “I should say at the outset that I have obtained your e-mail address from an internal list and that more than 500 of your colleagues will also be receiving this e-mail in the next day or so”. Some Council staff complained to the Council’s ICT service as a result, having found the emails perturbing. The Council explained that, in its view, the emails were deemed to be damaging to the Council’s reputation, and seemingly designed to adversely affect the confidence of staff in their senior officers. The Council stated that the emails were intended to establish contact with staff and to invite them to share information with him, and also to solicit subscriptions to the complainant’s website.
- (j) The Council stated that the complainant has continued to ask questions about the named official, demonstrating an obsessive focus on both that named official and the planning issue.

Could the request fairly be seen as obsessive?

56. In his awareness guidance on the subject of vexatious and repeated requests the Commissioner recognises that obsessive requests are usually a very strong indication of vexatiousness. The guidance states that:

“Relevant factors could include the volume and frequency of correspondence, requests for information the requestor has already

² This request and subsequent complaint was considered by the Commissioner under case reference FS50365275

seen, or a clear intention to use the request to reopen issues that have already been debated and considered".

57. The Commissioner's guidance on the subject of vexatious and repeated requests states that:

"It will be easiest to identify an obsessive request where an individual continues with a lengthy series of linked requests even though they have independent evidence on the issue (e.g. reports from an independent investigation). The more independent evidence available, the stronger the argument will be".

58. As set out above, the Council has provided evidence that the issues at the heart of the complainant's request have either been extensively investigated, or are already available in the public domain. The fact that the complainant pursues these issues despite being in possession of independent evidence that the Council's stated position is valid is characteristic of an obsession as per the Information Tribunal in the cases of *Welsh v Information Commissioner EA/2007/008* (16 April 2008) and *Coggins v Information Commissioner EA/2007/0130* (13 May 2008).
59. The Commissioner notes the volume of correspondence involved in this case between the complainant and the Council, and the fact that the complainant has clearly attempted to obtain the desired information by contacting various different individuals at the Council, and even an ex Council employee via his own personal email address.
60. Taking into account that the underlying issues have already been independently adjudicated on, that previous requests for information under the Act on the same or similar issues have been answered and the complainant's apparent infinite lack of satisfaction with those responses, the Commissioner accepts that they can fairly be characterised as obsessive.

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

61. The Commissioner notes in his awareness guidance on vexatious and repeated requests that:

"The focus should be on the likely effect of the request (seen in context), not on the requester's intention. It is an objective test – a reasonable person must be likely to regard the request as harassing or distressing.

Relevant factors under this heading could include the volume and frequency of correspondence, the use of hostile, abusive or offensive

language, an unreasonable fixation on an individual member of staff, or mingling requests with accusations or complaints”.

62. The Commissioner notes that most parts of the complainant’s request focus to a certain extent on an individual member of staff; five of the nine requests for environmental information specifically name the individual and therefore have them as their direct focus. The Commissioner is aware that the complainant previously submitted a set of requests to the Council, also with a substantial focus on this named official.
63. The Council has provided evidence of the complainant’s potentially unauthorised actions, in the way that he has obtained contact details for members of Council staff, and then utilised these details to contact Council staff in an attempt to elicit information on these matters, and to obtain further subscribers to his website. The Council has also provided evidence that the complainant has targeted an ex-Council employee via his personal email address. The Commissioner considers that these activities further point to the vexatiousness of the complainant’s requests, and demonstrate his intention to cause harassment to the Council and its employees.
64. The Commissioner has also noted that the complainant’s correspondence often contains requests for information mixed in with complaints and accusations. For example, in his request for an internal review, the complainant made further information requests, repeated requests that had previously been responded to by the Council, and accused the Council of failing to handle his information requests correctly.
65. The Commissioner is satisfied that the request – in its context – did have the effect of harassing the Council. The Commissioner has come to this view in particular as a result of the complainant’s continued focus on the named officer in his request and associated correspondence.

Would complying with the request impose a significant burden?

66. The Commissioner’s awareness guidance on the subject of vexatious and repeated requests states that:

“You need to consider more than just the cost of compliance. You will also need to consider whether responding would divert or distract staff from their usual work”.

67. As above, the Council stated that the amount of time involved in locating and extracting the requested information would exceed the cost limit set out under the Act, and that compliance would divert resources in a manner which would be disruptive to the Council’s normal activities.

68. In addition to the point set out at paragraph 67 above, the Commissioner also notes the nature of the complainant's correspondence to the Council. The evidence provided by the Council demonstrates that each letter issued to the complainant tends to generate a new set of requests, complaints and/or allegations in response. As evidenced above, the Commissioner also notes the complainant's tendency to attempt to contact other Council officials to obtain information when he has been unable to obtain it via more formal channels.
69. Having considered the evidence provided by the Council, the Commissioner has noted the volume of correspondence sent by the complainant to the Council, generating new information requests within many of the pieces of correspondence. Whilst the Commissioner's investigation in this particular case has focussed on the handling of the information request of 6 January 2011, the Commissioner notes that correspondence on this and similar matters both pre- and post-dated the request under investigation. In light of this the Commissioner accepts that answering this request would be extremely likely to lead to further correspondence, further requests and possibly further complaints against the Council. These would impose even more of a burden on the Council in terms of time, costs and diversion of resources to deal with the requests.
70. The Commissioner considers it appropriate for the Council to consider the cumulative effect of dealing with the correspondence associated with the complainant's request. The Council has provided the Commissioner with samples of the correspondence received by various Council officials from the complainant. In conclusion the Commissioner accepts that, taking together the action already taken by the Council and the potential for further correspondence and follow-on requests from the complainant, the effect of complying with the request would have placed a significant burden on the Council.

Is the request designed to cause disruption or annoyance?

71. This factor relates to the requester's intention and the Commissioner has seen no evidence to suggest that the complainant has explicitly stated that he wants to cause disruption or annoyance in relation to this request. From the correspondence on the case, the Commissioner considers that it is more likely that the requests are designed to elicit information that the complainant thinks will help him, rather than being designed to cause disruption or annoyance, therefore he cannot conclude that this element of vexatiousness is present.

Does the request lack any serious purpose or value?

72. The Commissioner's Awareness Guidance 22 relating to vexatious requests states that;

"It is not appropriate to use lack of value as an argument simply because you cannot imagine what the value might be. You must demonstrate that a request has no purpose or value, rather than simply suggest that because the requester did not provide a reason there cannot be one."

73. It is clear from the correspondence on the case that the complainant is genuinely trying to pursue an issue that is of importance to him, or that he considers to be in the public interest. Therefore, the Commissioner is not of the opinion that the request has no serious purpose or value. However, he does accept that the value of the requests is diminished by the fact that the underlying issues have been already been independently investigated and adjudicated upon and that the council have previously responded to his request.

74. The Commissioner is however of the opinion that any serious value or purpose in this request is not enough to prevent it being vexatious.

Conclusion

75. The Commissioner considers that the request can be fairly characterised as obsessive, harasses the authority and causes distress to staff, and imposes a significant burden in terms of expense and distraction. The Commissioner does not find that the request is designed to cause disruption or annoyance or lack any serious purpose or value. However the Commissioner is satisfied that, on balance, taking into account the context and history of the request, that the request is manifestly unreasonable.

The public interest test

76. As the Commissioner is satisfied that the request is manifestly unreasonable, he has gone on to consider whether the public interest in maintaining the exception outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosing the requested information

77. The Commissioner recognises the generic public interest argument that disclosure of the information increases transparency and accountability and notes regulation 12(2) which states:

"A public authority shall apply a presumption in favour of disclosure".

78. During the course of the Council's handling of his request, the complainant made the following points in favour of the public interest in disclosing the requested information:

- The fact that the Council's decision not to comply with his request was an "attack on press freedom".
- The fact that the named officer in question is a public official and has been the subject of controversy. Therefore, in the complainant's view, the Council should have answered every question to demonstrate publicly that it had nothing to hide.
- The complainant also stated that "the "peer review" of [named official] had been completed in January 2010 and [the Interim Managing Director] had written to all councillors about the results in February of the same year. It was, therefore, already in the public domain".

79. The Council also made reference to the genuine public interest in transparency, particularly given the highly publicised governance issues affecting the Council.

Public interest arguments in favour of maintaining the exception

80. The Council has explained that, whilst it recognises the public interest in transparency, the effect of the complainant's approach to the issues is vexatious. The Council raised points relating to the complainant's view that the Council's responses amount to "censorship" and an attack on press freedom; that the complainant has claimed freedom of information to be a "disgrace" and that the Act itself is being used to obstruct his investigations.

81. The Commissioner considers that to divert the Council's resources from its core public functions in order to comply with this, and most likely subsequent, requests would not be in the public interest.

Balance of the public interest arguments

82. The Commissioner accepts that there are compelling arguments in favour of maintaining this exception in this particular case due to the public interest in protecting the integrity of the EIR and ensuring that they are used responsibly. Although public authorities are encouraged to act in a transparent and accountable way which benefits the public as a whole, it is not the intention of the EIR to require public authorities to repeatedly provide the same information.

83. 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 where in the circumstances the wider public interest would not be served by responding to the request.

84. The Commissioner also considers that there is a strong public interest in not putting an unreasonable burden upon the Council in pursuance of a matter that has already been independently heard and adjudicated upon.
85. In view of the above, it is the Commissioner's view that in all the circumstances of this case, the public interest in maintaining the exception outweighs the public interest in disclosing the information. Therefore he considers that the request is manifestly unreasonable and finds that the Council acted appropriately in refusing the request.

The Decision

86. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

87. The Commissioner requires no steps to be taken.

Right of Appeal

88. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

89. 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.

90. 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 20th day of December 2011

Signed

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

Legal Annex

Regulation 2 - Interpretation

Regulation 2(1) In these Regulations –

“the Act” means the Freedom of Information Act 2000(c);

“applicant”, in relation to a request for environmental information, means the person who made the request;

“appropriate record authority”, in relation to a transferred public record, has the same meaning as in section 15(5) of the Act;

“the Commissioner” means the Information Commissioner;

“the Directive” means Council Directive 2003/4/EC(d) on public access to environmental information and repealing Council Directive 90/313/EEC;

“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;
- (d) reports on the implementation of environmental legislation;
- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c) ; and

the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of elements of the environment referred to in (b) and (c)

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.
- (f)

Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides that –

"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."

Section 12(2) provides that –

"Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit."

Section 12(3) provides that –

"In subsections (1) and (2) "the appropriate limit" means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases."

Section 12(4) provides that –

"The secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

- (a) by one person, or
- (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them."