

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

Date: 17 January 2013

Public Authority: Peak District National Park Authority

Address: Aldern House
Baslow Road
Bakewell
Derbyshire
DE45 1AE

Decision (including any steps ordered)

1. The complainant requested various items of information from the Peak District National Park Authority ("the authority"). The authority refused to respond to the requests using the exclusions under section 14(1) and 14(2) of the Freedom of Information Act 2000 ("the FOIA"), which concern vexatious and repeated requests. The Commissioner decided that the authority should have considered the requests under both the FOIA and the Environmental Information Regulations 2004 ("the EIR"). The Commissioner therefore considered the application of the equivalent exception under the EIR, regulation 12(4)(b), which relates to manifestly unreasonable requests.
2. The Commissioner's decision is that the information was exempt under section 14(1) and regulation 12(4)(b). The Commissioner finds that the authority breached its obligations under regulation 14(2) and 14(3) because of its failure to issue a refusal notice under the EIR.
3. The Commissioner does not require any steps to be taken.

Request and response

The complainant's requests

4. The complainant made a number of requests for information in the following terms:

9 July 2011 at 9:32 (FOI100187C)

"...I am requesting

1. *The report from [name] previously denied to us*
2. *The report from [name] previously denied to us*
3. *any written communication between [name] and his legal team [we are aware his head of law chose not to get involved as 'she knew someone in the community close to the premises']*
4. *The full reason why [name] chose not to ask the police to be involved...*

...we are requesting the information supplied to the Henry Smith Charity and Children In Need in relation to the development – again denied in the past on the grounds that legal action may be taken by [name] has now prevented this so the information should be in the [sic] public domain [sic]"...

...the final FOI is a request for a full explanation of why this money is not being reclaimed and all information relating to this decision from start to finish [sic]".

9 July 2011 at 16:04 (FOI100187B)

"While we are on the subject and as no legal action is pending I am also again asking for all correspondence between Crystal wallage and the PDNPA [especially to and from [name] regarding [property name] under the FOI"

9 July 2011 at 16:07 (FOI100187A)

"Following [name]'s letter of 7th July regarding the fact that the authority [sic] have chose [sic] not to proceed with enforcement on the grounds of illegal occupation of barns to east of land end farm I am requesting all correspondence e-mails etc regarding this issued between members of planning, enforcement and the legal teams during the past two years. In particular we are seeking the information made available to council but all background [sic] discussions [sic] regarding the information to be obtained [sic] the efforts to obtain this information etc are request [sic]"

17 July 2011 at 16:04 (FOI100189A)

"Under the FOI act I would be grateful if you would send me details of every recommendation made to pursue enforcement made by Members of the planning committee and any other committee [sic] during the past 30 years and of these how many returned to be discussed at a full planning meeting. For each case I wish to know the reason given by the enforcement officer in charge of the case for not pursuing this. Examples would include para gliding at [address] etc

I would also like a list of all cases where retrospective planning applications have been used to validate developments that breach [sic] planning consent and again the justification given by the planning officer [for example [address]]".

17 July 2011 at 18:56 (FOI100189C)

"Since your response regarding the interaction between [name] and the police differs materially from the information I have been provided by [sic] the police I would like a copy of any written communication between [name] and the police and any minutes – you refer to actual civil and/or criminal action it is in the public interest to have a full explanation of the reasons he feel [sic] that inaction is 'in the public interest'

You claim that request 4 was answered in the letter of Sept 2010 [attached] which it clear is not [sic] as the letter implies that the reclaim was on going so a full explanation of this is required to gether [sic] with any correspondence with any part regarding this decision [sic]".

17 July 2011 at 20:12 (FOI100189B)

"In the attached e-mail from [name] he refers to a report that is clearly different to that submitted to members. i [sic] would like a copy of this report and any other e-mails from or to [name], [name] and/or [name] regarding the application and committee considerations relating to the application subject to these e-mails".

The authority's response

5. The authority issued a refusal notice on 3 August 2011 and said that it was not going to comply with the requests and wished to rely on the exclusions under section 14(1) and 14(2) of the FOIA. The authority said that the decision had been reviewed already so there was not going to be any further response.

Scope of the case

6. The complainant contacted the Commissioner to complain about the way his request for information had been handled on 6 September 2011. He asked the Commissioner to consider whether the authority had correctly refused to respond to his requests using section 14 of the FOIA.

Reasons for decision

Are the EIR relevant?

7. The appropriate access regime for information that is "environmental" is the EIR. Environmental information is defined by regulation 2 of the EIR. Regulation 2(1)(c) provides that any information affecting or likely to affect the elements and factors of the environment will be environmental. It is apparent to the Commissioner that at least some of the requests should have been considered under the EIR, where they concern planning matters that affect the environment. As the exception under regulation 12(4)(b) of the EIR is so similar to the exclusion under section 14(1) of the EIR, the Commissioner has considered the application of both in the analysis below and does not consider that it is necessary to try to identify more precisely which requests should be considered under the FOIA and the EIR.

Section 14 and regulation 12(4)(b)– vexatious, repeated and manifestly unreasonable requests

8. Section 1(1) provides a general right of access to recorded information that is held by public authorities. Section 14(1) and 14(2) of the FOIA state the following:

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

(2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request".

9. In this particular case, the authority has relied on both sections 14(1) and 14(2). For clarity, the Commissioner will firstly consider whether any of the requests were vexatious. If they were, it will not be necessary to also consider whether they were repeated although the repetitive

nature of a request can be taken into account when considering whether it was vexatious.

10. Regulation 12(4)(b) of the EIR states that:

"12(4)...a public authority may refuse to disclose information to the extent that –

(b) the request for information is manifestly unreasonable".

11. For clarity, the Commissioner's general approach to considering vexatious requests is broadly the same under both the FOIA and the EIR. Guidance on vexatious and repeated requests is available on the Commissioner's website at www.ico.gov.uk and for ease of reference at the following link:

http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/vexatious_and_repeated_requests.ashx

12. As explained in the guidance, when considering if a request for information is vexatious, the Commissioner will consider the argument and evidence that the complainant and the public authority are able to provide. The Commissioner's analysis will generally focus on 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 disruption or annoyance?
- Does the request lack any serious purpose or value?

13. It will not be necessary for all of the above criteria to apply but in general, the more that apply, the stronger the case for a vexatious request will be. The Commissioner is able to take into account the history and context of the request.

14. The Commissioner would like to make clear that although he sought arguments from the complainant to support his case that these particular requests were not vexatious, none were forthcoming.

Could the request fairly be seen as obsessive?

15. When a request for information is refused as vexatious, it is often the case that an examination of the background will reveal a long and

difficult relationship between the parties that has arisen as a result of a dispute. This is clearly the case here.

16. The authority explained to the Commissioner that the complainant initially contacted the authority in 2007 regarding a number of issues concerning a planning application submitted by his neighbour, alleging breaches of the application and connected to this, problems with the grant funding awarded for the development. The authority explained that the complainant believes that it is acting unlawfully and against its own policies by not pursuing the complainant's neighbour in regard to both the development and reclamation of grants. He also disagrees with the way in which the authority has conducted its investigations.
17. The authority explained to the Commissioner that it considered that the complainant's continual correspondence with the authority relating to issues connected to planning and grants had reached a point where it could fairly be characterised as obsessive. It said that the complainant's correspondence about these issues had been extremely voluminous and frequent over a significant period of time. It provided the Commissioner with a large amount of evidence of its correspondence with the complainant dating back to 2007. It said that the correspondence had included multiple requests for information, requests for explanations of the authority's actions and complaints.
18. The authority said that it had identified that it had responded to more than forty requests for information and had provided information in most cases, and where this was not possible, an appropriate refusal notice had been provided although this had not prevented the complainant from submitting substantially similar requests. It said that the requests made had become repetitive and it was able to point to a number of examples to demonstrate the repetitive nature of the requests.
19. The authority also pointed out that various council members and staff, including the Chief Executive, had corresponded with the complainant about the issues he had raised over the years, including staff in the planning, enforcement and conservation departments, as well as officers responsible for awarding and managing grant funding. The authority said that it had provided a number of detailed responses to the various queries in writing, over the telephone and in meetings involving the complainant, members and authority officers. The authority explained that the Chief Executive had written to the complainant on a number of occasions. In the correspondence, the Chief Executive had listed and responded to each of the concerns raised by the complainant and explained how the authority intended to improve its procedures where they were found to be lacking. The authority provided the Commissioner with copies of the relevant correspondence.

20. The authority added that it considered that the concerns raised by the complainant had been thoroughly examined through its complaints procedure. It explained that there had been a number of investigations including reviews by internal and external audit and appropriate members. The authority referred in particular to an investigation carried out by Derbyshire County Council's audit team in June 2009. This sought to identify any irregularities in the provision of grant funding and recommend improvements in the authority's procedures. In addition, an independent audit was commissioned through the authority's own external auditors, Parkhill (previously Clement Keys). The purpose of this investigation was to consider whether there was evidence of fraud.
21. The report by Derbyshire County Council identified a number of issues with the way the matters had been handled and it made recommendations for the future. The "Parkhill report" made some further recommendations. The authority said that copies of this report and the one by Derbyshire County Council had been supplied to the complainant in a redacted form. The authority also made this information available to the Commissioner to assist with the investigation.
22. At the complainant's instigation, the Audit Commission had also conducted an investigation following a complaint on 29 August 2010. The authority said that the Audit Commission's response indicated that the authority had responded reasonably and appropriately to the issues. It provided the Commissioner with a copy of the response provided by the Audit Commission to the complainant on 17 September 2010.
23. The authority said that it had taken the complaints seriously and had taken planning enforcement action relating to this case, details of which it outlined for the Commissioner. It has also looked into whether it would be expedient to attempt to reclaim the heritage grants that were awarded however, following a consultation with English Heritage, the authority decided not to pursue this action since support from English Heritage would not be provided. The authority is currently in the process of considering issues connected to the reclamation of another grant paid under the New Environmental Economy Scheme. The outcome of that is yet to be determined. The authority highlighted that there is also an on-going police investigation, following the re-opening of a previous case following representations by the complainant.
24. The authority told the Commissioner that it had implemented the following changes to its procedures as a result of the complainant's complaints:
 - A revised protocol for authorising grants
 - A review of terms and conditions for all grant schemes

- Increasing staff awareness of procedures to ensure that adequate checks are made, including site visits and follow-ups
 - That reasonable steps are taken to verify the authenticity of applications that come from charitable groups or groups claiming a relationship with a charity or specific group of people
 - Project development, authorisation and monitoring as far as practical to be handled by at least two different officers
 - The implementation of an online document management system that provides for internal and external transparency. Planning information was previously only available in a paper-based filing system
 - The development of a new grants management system that will ensure compliance with the authority's procedures
25. The authority expressed the view that continuing to pursue requests and complaints against this background was obsessive. It said that the requests were clearly intended to facilitate the continuation of a dialogue between the parties about issues which the authority considers are now closed. The authority said that it was common for the complainant to submit requests that are not specifically asking for recorded information, but rather are seeking an explanation as to why a particular action was or was not taken, for example, why the authority has not sought to reclaim grants, or asked the police to investigate fraud. The authority highlighted that the complainant was attempting to use the legislation in a way that was more focused on challenging the authority's responses to his complaints than genuinely obtaining recorded information. It pointed to the following examples:
- "...the final FOI is a request for a full explanation of why this money is not being reclaimed..."*
- "An explanation why [name] has refused to ask the police to investigate an apparent fraud despite the fact the police state it would be an easy one to investigate". (request made on 17 April 2011)*
26. The authority argued that the requests are a manifestation of the complainant's unwillingness to accept the responses provided to him. It highlighted that other independent avenues are open to the complainant, such as the Local Government Ombudsman, should he remain unhappy with the responses provided to him. However, the complainant had not pursued this, despite advice by the authority itself to do so.
27. It is clear from the face of the correspondence that the complainant believes that the authority has not been transparent about the issues. In an email dated 16 April 2009, he comments that he considers that getting answers to his questions has been like "trying to get blood out of a stone". It is clearly the case that the complainant had raised some

valid concerns and was therefore justified in his pursuit of these issues through the use of the FOIA to a reasonable extent. However, while the Commissioner does not doubt that the pursuit of such issues may lead to various frustrations on both sides, it was not apparent to the Commissioner that the authority had behaved in the way suggested by the complainant. The Commissioner was left with the impression that the authority had worked hard to answer the persistent questions posed by the complainant over a long period of time and had taken the issues seriously, exploring its options through the proper channels following detailed advice.

28. Ultimately, the complainant may disagree with the actions taken to remedy the problems but that does not justify the continued pursuit of these issues through the use of the FOIA in the Commissioner's view. The Commissioner can appreciate that the complainant may still be concerned that he has not received the full details of the outcome of the investigations conducted because material has been redacted from the reports however when such redactions are made, they may be appropriate and in accordance with information access regimes. An appeal to the Commissioner is the mechanism by which such issues are resolved. Overall, the Commissioner was satisfied that the authority had presented a persuasive case in support of the argument that the requests had now reached a stage where it would be reasonable to characterise them as obsessive.

Did the request have the effect of harassing the council?

29. The Commissioner would like to highlight that this element of the criteria is concerned with the effect of the request on any reasonable public authority, rather than what the complainant's intention was. It is not uncommon in relation to vexatious requests for the requester to have a genuine conviction that the request was a reasonable one.
30. The Commissioner has already noted above that the authority has had to deal with a very large amount of communication from the complainant over the period in question and the authority argued that this together with the frequency and nature of that communication had the effect of harassing its staff.
31. The authority said that the complainant continues to make very serious allegations against it in his correspondence. For example, in an email dated 22 February 2011, he indicated that if the authority did not take action it would be conspiring to defraud. The Commissioner also notes that the complainant has questioned the honesty and integrity of the authority's staff on various occasions and his requests are mingled with accusations and complaints. For example, in an email dated 9 July 2011, the complainant says:

"Presumably this will be dealt with in the same way as other prominent cases with a retrospective permission to cover up the PDNPA officers actions".

32. The authority pointed out that the complainant was not satisfied with the responses it provided and in fact, the responses it has provided only serve to elicit further complaints and requests.
33. The authority suggested, and the Commissioner agrees, that responding to these requests would not resolve the issues or satisfy the complainant. It would instead only generate further complaints and requests. The Commissioner considers that it would be reasonable for the council's staff to regard further requests and correspondence on the same topic from the complainant as harassing when there was every indication that responding would only lead to further requests, enquiries and complaints given the nature of previous engagement.

Would the request impose a significant burden?

34. The Commissioner considers that compliance with the request would impose a significant burden when its complete context is taken into account, that being the campaign that the complainant has been pursuing ever since 2007 in connection with the particular grievances that he has. It is clear to the Commissioner that the complainant's request and correspondence over that time would have imposed a substantial burden on public resources, both in terms of expense and distraction.

Is the request designed to cause disruption or annoyance or does it lack any serious purpose or value?

35. The Commissioner considers that this part of the vexatious criteria is difficult to prove because it requires objective evidence that it was the complainant's intention to cause disruption or annoyance. The Commissioner did not consider that the authority provided sufficiently strong evidence to show that this was the case. It is clear to the Commissioner that the complainant genuinely believes that he is acting in the public interest. However, given how the issues have progressed over a long period of time, the Commissioner considers that any serious purpose or value the requests may have is substantially reduced. The vexatious quality of the requests outweighs any serious purpose or value in the Commissioner's view.

Regulation 12(4)(b) – Public interest test

36. Unlike section 14(1), this regulation has a public interest test associated with it. This means that even if the request was manifestly

unreasonable, information can only be withheld if the public interest in maintaining the exception outweighs the public interest in disclosing the information.

37. There are important reasons why this exception exists under the EIR. Both the FOIA and the EIR give the public unprecedented rights to access recorded information held by public authorities. In exercising those rights, members of the public must be responsible. It was not the intention of the legislation that compliance with requests should impede disproportionately and unfairly on the many other important duties that public authorities have to carry out, often with limited resources in place. Similarly, it is not the intention of the legislation to allow members of the public to pursue grievances or complaints against public authorities to a disproportionate extent.
38. Given the background to this matter described in this notice, the Commissioner was not persuaded that there was sufficient public interest in compliance with these requests. The strongest public interest by the time of these particular requests was in upholding the exception in order to protect the public authority's resources and the reputation of the legislation.

Other Matters

39. In this case, the authority only issued one refusal and said that since this had already been reviewed, it was not going to engage any further with the complainant. The Commissioner would like to highlight that the main value of internal reviews is often in allowing the complainant the opportunity to make representations. There is no statutory obligation to conduct an internal review under the FOIA however, there is under the EIR and the authority must allow the complainant to make representations in accordance with regulation 11. The authority should bear these comments in mind when handling future requests.

Right of appeal

40. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 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

41. 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.
42. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

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