

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

Date: 23 September 2013

Public Authority: Davenham Parish Council
Address: 7 Leewood Close
Hartford
Northwich
Cheshire
CW8 3AS

Decision (including any steps ordered)

1. The complainant has requested information relating to the ownership of land during the 1940's and 1950's by Davenham Parish Council ("the council"). The council refused to comply with the request as it considered it to be vexatious and repeated under section 14(1) and 14(2) of the Freedom of Information Act ("the FOIA").
2. The Commissioner's decision is that the council has correctly refused the request on the grounds that it is vexatious under section 14(1) of the FOIA, but should also have cited regulation 12(4)(b) of the Environmental Information Regulations ("the EIR").
3. He requires no steps to be taken by the council.

Request and response

4. Between 14 July 2012 and 12 August 2012, the complainant made 19 requests to the council for varied information including council member's registered interests, land valuations, insurance policies, paid annuities, financial accounts and minutes, title deeds, financial budgets, and correspondence with the council's solicitors. The majority of the

information asked for within these 19 requests appears to relate to the council's management of public access between Mount Pleasant Road and Butchers Stile Playing Field in Davenham, and the council's ownership of nearby land during the 1940's and 1950's.

5. On 14 August 2012, the complainant requested further information as follows:

- "A) Copy of DPC finance account's showing the purchase of fields 92 & 100 & 93 from Northwich UDC.*
- B) Copy of planning permission to include all correspondence and plans relating to the building of all Houses, footpaths, roads and car parks built upon fields 92 & 100 and on or after 13th July 1955.*
- C) Copy of all correspondence, planning permission and plans showing any and all parts of field 92 and 100 lawfully Annexed after 13th July 1955.*
- D) DPC has informed me that its contractors and Tenants are permitted to cross field 92 from Mount Pleasant Rd and by way of a long term agreement with a third party. Please Identify both the authorising party and also any and all properties that DPC owns and leases/owned leased and sold off and since 1955.*
- E) Copy of the deeds and plan relating to field 93 the cricket ground. I am aware that there were agricultural restrictions to this land please provide copy of all such details.*
- F) I had asked DPC if that my home was lawfully built and that DPC referred me onto my Landlord WVHT. Might DPC be reminded that my home is built upon field 92 a field that has been owned by DPC since 1955. DPC by way of its Solicitors had notified H.M Land Registry only this year that it has never sold field 92 and thereby proving its self [sic] responsible and party to the building of all properties roads, footpaths and car parks built on that land and to include my own home. Might DPC now confirm if that my home was built lawfully.*
- G) DPC has had numerous proprties built upon field 92 & 100 please provide me the gross annual income that DPC receives from these properties.*
- H) DPC has confirmed and by way of the minutes of its own meeting that it has offered up to WVHT and for £1 the 'public access' running Mount Pleasant Rd to Butchers Stile Playing Field will DPC better explain why it would give away part of field 92 in such a fashion."*

"Continuing my research of fields bought up and by DPC 1947 – 1955 I now require you to provide to me and by way of FOI the names of those Solicitors that DPC had instructed to act for it in the purchasing of Fields 93 – 92 – 100. Further that you provide

me copy of all correspondence passing between DPC and its Solicitors and in the purchase of fields 93 – 92 – 100.”

6. The council responded on 21 August 2012. It explained that it was refusing the request because it considered it be vexatious and repeated under the FOIA.
7. The complainant's requested an internal review on 30 October 2012.
8. The council completed its internal review on 20 November 2012, and maintained its position.

Scope of the case

9. The complainant contacted the Commissioner on 4 September 2012 to initially complain about the way his requests for information were being handled. Upon the council's refusal of his request of the 14 August 2012, he asked the Commissioner to consider whether the council had correctly refused to respond.
10. The Commissioner identified that the refusal should have cited both the FOIA and the EIR. While part of the information requested may fall under the FOIA (such as that requesting the identity of the council's solicitors during 1947 - 1955), the remainder would be environmental information as defined by the EIR. The council subsequently confirmed that it would rely upon the exception provided for manifestly unreasonable requests by regulation 12(4)(b) of the EIR for that information.

Reasons for decision

Is part of the information environmental?

11. Information is "environmental" if it meets the definition set out in regulation 2 of the EIR. Environmental information must be considered for disclosure under the terms of the EIR rather than the FOIA. Under regulation 2(1)(c), any information on activities affecting or likely to affect the elements or factors of the environment listed in regulation 2 will be environmental information. One of the elements listed is land. Part of the requested information relates to the ownership and management of land. This issue can be identified as affecting the land. The Commissioner therefore considers that part of the request should be dealt with under the EIR.

Regulation 12(4)(b) of the EIR and Section 14(1) of the FOIA

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

"For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that-

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

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

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

14. The Commissioner recognises that, on occasion, there can be no material difference between a request that is vexatious under section 14(1) of the FOIA and a request that is manifestly unreasonable on vexatious grounds under the EIR. The Commissioner has therefore considered the extent to which the request could be considered as vexatious.

15. The Commissioner has recently published new guidance on vexatious requests and for ease of reference, this can be accessed here:

http://www.ico.org.uk/news/blog/2013/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

16. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. Sometimes, it will be obvious when requests are vexatious, but sometimes it may not. In such cases, it should be considered whether the request would be likely to cause a disproportionate or unjustified level of disruption, irritation or distress to the public authority. This negative impact must then be considered against the purpose and public value of the request. A public authority can also consider the context of the request and the history of its relationship with the requester when this is relevant.

17. In this particular case, at least 19 known prior requests were made to the authority between 14 July 2012 and 12 August 2012. These requests were for information largely relating to the council's management of a public access route between two locations, in addition to information about the council's ownership of land during the 1940's and 1950's. Additional requests were made for information about the administration of the council, and on top of these these requests, there has been a large volume of extensive correspondence between the parties on a range of issues. After receiving a further request from the

complainant on the 14 August 2012, the council chose to issue a refusal notice.

The complainant's position

18. The complainant appears to have begun communicating with the council on 25 February 2012 over his apparent concerns about a public access route. He confirmed that he was interested in identifying the public authority responsible for maintaining the route, and sought information about its legal status. As part of this correspondence he made his first information request for all correspondence between the council and a named housing trust that relate to the issue, as well as council minutes where the issue is raised.
19. In July 2012 the complainant started to submit successive information requests to the council in order to seek information on specific details relating to the council's management of the public access route and surrounding land. In addition to this, he started to make requests for information about the management of the council itself, including council member's registered interests, its procedures in electing its chair, its financial accounts for the years 2010 to 2012, and all council minutes from 1975 to 2004.
20. In August 2012, the complainant continued to make information requests to the council, and appeared to be seeking information about the legality of the council's ownership of the public access route previously referred to. The complainant also appeared to be concerned about the ownership of land, and made requests for information about land owned by the council during the 1940's and 1950's. Requests were also made for information pertaining to the council's FOIA procedures, following the complainant's concern about fees the council had charged him for documents.
21. On making a further request on 14 August 2012 for a range of documents relating to the council's ownership of land during the 1940's and 1950's, the council issued a refusal notice.

The council's position

22. The council informed the complainant on 21 August 2012 that it considered his request to be vexatious and repeated. The council explained that it had received approximately 20 individual information requests in the preceding month, and had provided information in response where immediately available, or else was preparing information to be available in an upcoming meeting.
23. The council explained that it considered the amount of information requests and related correspondence it had received to be excessive, and detailed that it had received over 45 items of correspondence

between 1 July 2012 and 15 August 2012. The council had identified that duplicated information requests were being made to different staff and members of the council, both for information that had already been provided and which was in the process of being made available. The council provided an example of this by referring to the requests for information pertaining to the ownership of land, on which the complainant had already been provided with a letter from the council's solicitor explaining that this matter was being investigated in conjunction with two other public bodies. The council explained that it perceived that providing an answer to an information request or item of correspondence would frequently lead to further requests, which appeared to be of limited value due the complainant having already been informed that the matter was currently being investigated. The council stressed that diverting its resources in order to meet additional requests was detrimental to its efforts to resolve the issue of land ownership itself.

24. Additionally, the council advised the complainant that it considered that personal remarks contained in his correspondence and information requests appear to have been made in order to cause distress to its staff, and believed that engaging with the complainant would be likely to lead to complaints about the conduct of its staff.
25. In subsequent correspondence with the Commissioner, the council provided further information about its decision to refuse the request, in addition to copies of the complainant's general correspondence and requests for information.
26. The council has informed the Commissioner that it found the correspondence and requests being submitted by the complainant in August 2012 to have become unmanageable for the parish clerk ("the clerk"), who is employed by the council for 16 hours per week and is otherwise supported by voluntary parish councillors. The council advised that 86 copied pages of documents had already been provided to the complainant in response to his requests. Additionally, the chairperson of the council drew the Commissioner's attention to the five detailed letters that he wrote to the complainant during July 2012 in order to answer specific queries based on the information the council had provided. The council explained to the Commissioner that the principal issue that the complainant appeared to be interested in (the ownership of land) was an on-going matter of investigation by the council, and that the complainant been provided with correspondence from the council's solicitor detailing that the matter was being investigated and that the council would keep him informed on developments.
27. The council further explained that it considered some of the complainant's correspondence to be inappropriate in the language and allegations it contained, and that coupled with the volume of

correspondence received, led to the resignation of the previous clerk. In addition to this, the council has advised the Commissioner that it has been subjected to several complaints against its staff and members, as well as a complaint to the police, all of which have been dismissed as without grounds.

The Commissioner's analysis

28. Firstly, the Commissioner would like to highlight that there are many different reasons why a request may be vexatious, as reflected in the Commissioner's guidance. There are no prescriptive 'rules', although there are generally typical characteristics and circumstances that assist in making a judgement about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed as vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates them. A commonly identified feature of vexatious requests is that they can emanate from some sense of grievance or alleged wrong-doing on the part of the authority.
29. The Commissioner's guidance has emphasised that proportionality is the key consideration for a public authority when deciding whether to refuse a request as vexatious. The public authority must essentially consider whether the value of a request outweighs the impact that the request would have on the public authority's resources in providing it. Aspects that can be considered in relation to this include the purpose and value of the information requested, and the burden upon the public authority's resources.

The purpose and value of the request

30. In this case the complainant has asked for information within his request of the 14 August 2012 that may hold public value, as despite being for information that is over 50 years old, it may still relate to current issues of land ownership. As a public authority, it is reasonable that the council should expect to have requests made to it for information about issues such as land ownership and public access, as these issues can have clear impact on members of the public, particularly if they are local residents.
31. However, when considered in conjunction with previous requests from the complainant, it can be perceived that the request of the 14 August 2012 has followed a chain of successive requests and associated correspondence that have sought ever increasing levels of detail from the council, in addition to duplicated requests that appear to seek information that has already been provided or requested. While the requests and correspondence that the Commissioner has consulted has proven to be voluminous and highly detailed, it is apparent that the

principal issues that underlie the majority of the complainant's requests are his interest in the legality and management of a public access route, and the ownership of land which was built upon during the 1950's. It is clear to the Commissioner that when the council has provided information in response to a request on these issues, it has either led to repeated requests, or else to further detailed requests and queries on specific points, even to the extent that information with a highly tenuous connection to the wider issues is being requested. Examples of these include the complainant's request made on the 29 July 2012:

"...are you able to confirm to me that DPC has provided a caretaker to Butchers Stile Playing Fields and for some considerable time. Might there be a small annuity paid to the caretaker for his trouble."

And further, the complainant's request of the 3 August 2012:

"...please provide me the annual financial budget set for Butchers Stile playing field for years 2007 – 2012 and the exact amounts of monies used from those budgets to maintain/invest in the fields in each of those years."

32. The Commissioner has concluded that whilst the requested information has the potential to hold public value, it is in fact the latest in a chain of requests on the same issues, which have sought greater and greater levels of detail from the council. Some of the previous requests appear to be only tenuously linked to the wider issues that the complainant is interested in, suggesting that additional information is being sought for no serious purpose. Additionally, the Commissioner also considers that while some of the information requested might hold public value, the volume of the requests and additional correspondence is in fact preventing the issue of land ownership from being investigated properly by the council and its solicitor.

The burden upon the public authority

33. The Commissioner's guidance stresses that proportionality is a strong consideration in cases such as this, and the public value of a request must be considered against the burden that the request places on the public authority. In this case, the public authority is a parish council which employs one individual for 16 hours per week to act as its clerk. At the time of the council's refusal, it has explained to the Commissioner that the workload had become unmanageable for the clerk, and that this was a principal reason for the refusal.
34. The Commissioner, having reviewed all the evidence submitted by the council, is convinced that the requests and correspondence placed a severe burden upon the council. Using the evidence provided by both the complainant and the council, the Commissioner identified a

minimum of 18 pieces of general correspondence submitted by the complainant between 28 June 2012 and 26 July 2012, in addition to 19 requests for information between 14 July 2012 and 12 August 2012. Having analysed the dates that these were submitted to the council, the Commissioner identified that the complainant was frequently submitting multiple correspondence and requests to the council in single day. To illustrate this, the Commissioner noted that three information requests were made on the 3 August 2012 to the clerk's email address, which in turn requested the council's accounts relating to information requests, the annual financial budgets for a playing field from 2007 to 2012, and documents pertaining to the ownership of specific areas of land. While the majority of the requests are for information pertaining to the two wider issues (namely the public access route, and the ownership of land), the three requests made on the 3 August 2012 are illustrative of the varied and unrelated topics that the complainant has requested information about.

35. The complainant's requests that related to the two general issues previously referred to, were found to seek ever greater levels of detail from the council. The Commissioner considered that the way in which some of these requests were worded would have added an extra layer of burden on the council, due the tendency of the complainant to request specific information as part of a larger piece of correspondence which could include statements, allegations and general requests for opinions, thereby making it difficult for the council to interpret what was a valid request for information and what was not. Having reviewed the responses that the council provided to the complainant, the Commissioner has noted that despite the burden placed upon them by the complainants contact, the council made substantial effort to provide him with useful information, even to the extent of surpassing their responsibilities under the FOIA and EIR, and providing otherwise accessible public documents from the Land Registry.
36. Having considered the above, in conjunction with small size of the council and the limited resources available to it, particularly in terms of the clerk's time, the Commissioner has therefore concluded that responding to the complainant's latest request would cause an unjustified burden upon the council.

Conclusion

37. While there is a public interest in ensuring that information that might have relevance to current issues of land ownership and public access routes is accessible, there is no evidence to suggest that there is a pressing public need that would warrant the Commissioner over-turning the council's decision to apply section 14(1) of the FOIA and regulation 12(4)(b) of the EIR in the circumstances of this case.

38. The Commissioner has identified that the public value would need to be substantial enough to justify the severe impact that meeting the complainant's highly detailed request for documents from the 1950's would have on the council's operation. Having reviewed all the available evidence, it has been concluded that responding to the complainant's request would place an unacceptable burden on a public authority of this size, and that this exceeds the public value of the request. Complying with the request would divert the clerk from administering the normal business of the council, which in turn would prevent the council from undertaking its public functions. In addition to this, the diversion of the council's resources would in fact prevent the council from properly investigating the very issue of land ownership that the complainant appears most concerned about.
39. As the Commissioner has found that the council's refusal under section 14(1) of the FOIA and regulation 12(4)(b) of the EIR was valid, he has not considered it necessary to make a decision in relation to the council's application of section 14(2) of the FOIA.

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

Andrew White
Group Manager – Complaints Resolution
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF