

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

**Decision notice**

**Date:** 9 September 2013

**Public Authority:** South Staffordshire Council  
**Address:** Council Offices  
Wolverhampton Road  
Codsall  
South Staffordshire  
WV8 1PX

**Decision (including any steps ordered)**

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1. The complainant has made various information requests to South Staffordshire Council (council) connected to planning, plans and greenbelt boundaries. The council refused to respond to the requests relying on section 14(1) of FOIA as they deemed the requests to be vexatious. The Commissioner decided that the council should have considered the requests under both the FOIA and 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. The Commissioner's decision is that the council were correct to rely on section 14(1) of the FOIA, and that regulation 12(4)(b) is also engaged.
2. The Commissioner does not require the council to take any steps.

**Request and response**

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3. Between 23 September 2012 and 24 October 2012, the complainant made 18 information requests to the council. The council responded to 8 of the requests submitted between 23 September 2012 and 29 September 2012 but refused to answer the remaining 10 questions relying on section 14(1) of the FOIA. The unanswered questions were as follows:

29 September 2012

1) *"Where there is an extant planning enforcement notice in force for the demolition of a structure [sic] does that notice apply only to the footprint of that structure.?"*

11 October 2012

2) *"With reference to the 1996 local plan, when the greenbelt boundaries were determined on site 210, what legal documents were used if any, to establish there [sic] validity."*

12 October 2012

3) *"Is it permitted to have a static caravan sited in the rear curtilage of a dwelling house if it is used incidental to the said building. If permitted. How many units can be sited?"*

4) *"Would a haystack formed in greenbelt on a ssdc county parish holding require planning permission"*

18 October 2012

5) *"When planning enforcement officers enter private land to investigate complaints and the land-owner does not permit photographs taken on said land. Does the SSDC have legal powers to over-ride that refusal, if so what legislation permits this?"*

24 October 2012

6) *"Is planning permission required to have 100 breeding sows on a county parish holding in a residential area.?"*

7) *"Within the 27 parishes in ssdc how many public open space sites are allocated but not implemented and where are they located with site numbers.?"*

8) *"When a planning application is received by ssdc for residential development, what benchmark is used to decide if the site can achieve access.?"*

9) *"When there was public open space audit commissioned last was site 210 included in this audit?"*

10) *"Within the 27 parishes of south staffordshire how many cph of less than 1 hectare are there which can operate as a [sic] intensive livestock holding in a residential area.?"*

4. The council responded on 26 October 2012. It stated that it was refusing to provide the information relying on section 14(1) of the FOIA.

5. Following an internal review the council wrote to the complainant on 21 December 2012. It stated that its position remained the same.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 20 December 2012 to complain about the council refusing to answer his information requests.

### **Reasons for decision**

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#### **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 similar to the exclusion under section 14(1) of the EIR in its application in this case, the Commissioner has considered the application of both in the analysis.

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

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

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

9. 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".*

10. For clarity, the Commissioner's general approach to considering vexatious requests, as applied here, 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](http://www.ico.gov.uk) and for ease of reference at the following link:

[http://www.ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/dealing-with-vexatious-requests.ashx](http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx)

11. The Commissioner has therefore considered the extent to which the request could be considered vexatious.
12. The term 'vexatious' is not defined in the legislation. In *Information Commissioner vs Devon County Council & Dransfield*<sup>1</sup> the Upper Tribunal took the view that the ordinary dictionary definition of the word vexatious is only of limited use, because the question of whether a request is vexatious ultimately depends upon the circumstances surrounding that request. The Tribunal concluded that 'vexatious' could be defined as the "...manifestly unjustified, inappropriate or improper use of a formal procedure" (paragraph 27). The decision clearly establishes that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.
13. In the *Dransfield* case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) harassment or distress of and to staff. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather it stressed the *"importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests"* (paragraph 45).
14. The Commissioner will therefore consider whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to the serious purpose and value of the request.

### **Background and context**

15. The Commissioner considers it relevant to state that from information received, it is apparent that the council and the complainant have an on-going dispute, with a history dating back to 2004/2005 when the council

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<sup>1</sup> UKUT 440 (AAC) (28 January 2013)

had indicated to the complainant that land owned by him was both unallocated in the Local Plan and within the Greenbelt. This meant that in policy terms it would be highly unlikely that a planning application seeking to develop the land for residential purposes would be granted.

16. The council state that question 2, in the above list, "...*With reference to the 1996 local plan...*" is evidence that the complainant is seeking to return to matters that the council have previously dealt with and responded to on several occasions. The council believe that the purposes behind the requests are an attempt by the complainant to force the council to reconsider whether his land can be used for residential development.
17. The council have supplied a copy of three appeals decisions from the planning inspectorate dated 14 July 2005, 23 March 2006, and 28 August 2008 in which the complainant's appeals were dismissed.
18. The August 2008 appeal was made by the complainant about an enforcement notice from the council for the complainant to demolish a structure on his land due to a breach of planning control. The appeal was dismissed and the enforcement notice upheld. The council advised that a site visit was carried out on 25 September 2012 and this confirmed that the complainant had complied with the enforcement notice. The council point out that the site visit coincides with the time of the information requests made to the council.
19. The council has advised the Commissioner that much of the dialogue between the council and the complainant has been by way of telephone discussions which are then followed up with a subsequent request for information.

### **Disproportionate burden and detrimental impact of requests**

20. The council believe that 18 requests over a period of 24 working days from one applicant constitutes as a high volume of requests.
21. The council state that these requests are diverting the council's resources to continue with other council duties. It states that it is a small district council with limited resources and if the council were to answer the remaining 10 requests from the complainant, then further requests would be made surrounding the same issues, and that the complainant would never be satisfied until he obtains planning permission on his land. The council state it is this persistence that is causing a detrimental effect on the council, particularly on the local plans team, as the majority of the requests need to be dealt with by them, who consist of a small number of officers and responding to the requests has put strain on the department who are having to divert their

attention from other public greenbelt and planning issues to deal with the requests.

22. The council also states that the requests were not all repeated requests for exactly the same information, but they were often of a general nature, with an unclear purpose and have to be seen in the context of a wider dialogue that has been on-going with the complainant since 2004/2005 in relation to his own development site.
23. The council state that it has previously had discussions with the complainant about the amount of FOI requests, letters and phone calls to individual members of staff. These discussions considered the possibility of the council treating these requests as vexatious. The council state that the complainant agreed then to stop submitting requests, however the requests and dialogue continued.
24. The council states that previous experience with the complainant led it to believe that there would be further requests, correspondence and complaints had it continued to respond to the complainant's information requests. This would have increased the burden on the council's resources to be able to carry out its other council duties. The council provided the Commissioner with internal emails, one from the chief executive in 2006 and the other from the deputy chief executive in 2008, showing that the council had previously had to put in place points of contact inside the council, who were to deal with the numerous calls and correspondence from the complainant.
25. The council have also provided statements from council employees, made in 2006, stating that the complainant was contacting the council on a regular basis to discuss the green belt boundary and that he has been advised that he needs to go through the Local Plan, now known as the Local Development Framework (LDF), process and that it will take some years to reach examination.
26. It is clear to the Commissioner that there has been a long on-going dispute between the council and the complainant. It seems that until the council changes its response to the complainant and allows him to be able to develop his site, then further information requests would be made.
27. The complainant in this case made 18 information requests in 24 working days. The Commissioner is of the opinion that the overlapping nature of the requests shows a pattern of obsessive behaviour in relation to the amount of requests made over a short period of time. This would in turn create a disproportionate burden on the council to have to respond to all of the requests.

28. The council argues that 18 information requests in 24 days that were overlapping were creating an unjustified burden on their resources to carry out their other public duties. The Commissioner notes that the council responded to the first 8 requests up until 29 September, and it was from there that it began to refuse the requests as vexatious. This shows the Commissioner that there was a point at which the council took to start refusing all the requests and became aware that there may be no end to the amount of requests being made by the complainant. The Commissioner considers that there is an unreasonable persistent behaviour in the amount of requests being made to the council and the requests are showing to be an attempt to reopen issues which have been dealt with through other formal means of resolution such as the planning appeals process. The council have also demonstrated to the Commissioner that the requests seem to be a reaction to the council following up on the planning inspectorate appeal outcome in September 2012.
29. The Commissioner considers that the requests seem to be seeking to reopen a matter which has been pursued as far as possible through the appropriate routes – i.e. that the appeal to the planning inspectorate and it follows a long process of the council considering complaints about the complainant's planning issue. It also appears to the Commissioner that that the responses to the requests will not resolve the complainant's key concern and will not overturn the decision not to allow the site to be developed.
30. The council state that the tone of the complainant's comments on the "What do they know" website from an internal review request on the council's decision to apply section 14 of FOIA were inappropriate and calculated to cause gratuitous offence to officers engaged in dialogue with him and undermine the legitimate position of the council. The Commissioner has considered the example comments provided by the council, and whilst these comments were made after the council's refusal to respond to the information requests, they were taken into consideration by the council at the internal review stage. On reading them he does not consider them to be abusive or aggressive. The council may argue that they have a provocative nature to them but the Commissioner considers that the comments may have been made more in dissatisfaction that the information requests were refused, and they did not seem to be directed at any one in particular at the council. In addition the Commissioner is not convinced that the tone or language of the comments goes beyond the level of criticism that a public authority or its employees should reasonably expect to receive. Except for one comment, "*You can run but you can't hide*" which the Commissioner accepts could be interpreted in a threatening way, however he considers that it was more likely to be referring to the fact that his information request had been refused.

### **Value or serious purpose of the request**

31. The Commissioner considers that the complainant does have a genuine interest in the information he has requested and that he is of the view that his requests serve the serious purpose of gaining planning permission to develop his land. The Commissioner recognises that the complainant has pursued a number of avenues to try and obtain planning permission and that this continues to be an on-going issue between him and the council. The Commissioner can therefore appreciate that the complainant sees a real value in his requests. However, it is clear that this is a clearly personal value and purpose, and no arguments have been advanced by the complainant to suggest that the requests have a broader serious purpose or value in the interests of the public.
32. The Commissioner has considered the serious purpose and rationale for the requests and judged that against any unjustified or disproportionate effect on the council. Having regards to the fact that formal appeal processes have been conducted and there is no further route of appeal, that the council have demonstrated that the information requests are to be a continuation to these issues, and that the requests were creating a burden on the council with the frequent and overlapping nature. In this case, the Commissioner is satisfied that the council has correctly applied section 14 of the FOIA to refuse the requests as vexatious. The Commissioner also considers that regulation 12(4)(b) would also apply to the requests as manifestly unreasonable.

### **Public Interest test**

33. Regulation 12(1)(b) of the EIR requires that a public interest test is carried out in cases where regulation 12(4)(b) is engaged. The test is whether in all the circumstances of the case the public interest in maintaining the exception overrides the public interest in disclosing the information. When considering his decision the Commissioner must also bear in mind the presumption in favour of disclosure provided by regulation 12(2).

### **The public interest in disclosing the information**

34. The council has stated that it is aware of its statutory responsibilities in connection with information requests and to discharge them not only in good faith, but to do so in a positive and transparent manner.
35. The Commissioner considers that the public interest in this case is served in disclosing information to show transparency and accountability of the actions the council takes in relation to planning and planning enforcement matters. There is an onus on authorities to act



transparently in the planning decisions they take, and disclosure of this information may show how the council determines the decisions it takes in these sorts of matters. The Commissioner notes however that this is not a case where a large number of the public would be affected.

### **The public interest in maintaining the exception**

36. The council have stated that complying with the remaining requests would cause an unjustified burden on its resources in terms of expense and distraction, and that further requests would continue to be made on the matter that has already been taken through the final appeal processes. It argues that it is a small district council with limited resources and responding to the requests would cause a detrimental impact on the council being able to conduct its other council duties as it would divert the attentions of the small teams to attend to the requests.
37. The Commissioner considers that there is little wider public interest in requiring the disclosure of this information because the issue affects relatively few people beyond those living directly on or adjacent to the site. He recognises the compelling argument in favour of maintaining the exception on this case because of the public interest in protecting the council's resources in ensuring that it is able to conduct its other public duties without having to divert its staff time to attend to frequent overlapping requests of one person. While the public authorities are being encouraged towards goals of transparency and accountability which benefit the public as a whole, it is not the intention of the legislation to require that public authorities tolerate unwarranted distraction from continuous information requests which demonstrate an obsessive pattern to seeking information. If the Commissioner were to find that such behaviour is appropriate, he considers that the legislation would be seriously undermined. The Commissioner is strongly of the opinion that public authorities should be able to concentrate their resources on dealing with legitimate requests, rather than being distracted by requests that have little or no merit in where the wider public interest would not be served by the disclosure of the information.
38. In balancing these considerations. The Commissioner has had regard to the fact that the volume of requests and their overlapping nature, with the correspondence that has been submitted over a long period of time has placed a significant burden on the council's resources. He considers that requiring the council to respond to the requests would disrupt its everyday work, diverting a disproportionate amount of resources from its core business.
39. The Commissioner has also taken into consideration that the council responded to eight information requests before making a stance to refuse to continue to answer the further requests, and that the issues

involved in this case have been through an appeals process and understands that there may be future appeals and court proceedings taken out in relation to these issues. The Commissioner considers that regardless of the information provided by the council, it will not satisfy the complainant unless planning permission is granted on his land. It seems that the appropriate channels to attempt to obtain planning permission are through the appeal processes, such as the planning inspectorate, and does not consider the council responding to the information requests will finalise these issues.

40. In view of the above, the Commissioner considers that in all the circumstances of this case, the public interest in maintaining the exception under regulation 12(4)(b) outweighs the public interest in disclosing the information and therefore finds that the requests are manifestly unreasonable.

### **Conclusion**

41. The Commissioner therefore finds that the council was correct to refuse the requests under both section 14(1) of the FOIA and regulation 12(4)(b) of the EIR.

## Right of appeal

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42. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

43. 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.
44. 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**  
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