

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

**Decision notice**

**Date:** 30 October 2013

**Public Authority:** Cheshire East Council  
**Address:** Westfields  
Middlewich Road  
Sandbach  
CW11 1HZ

**Decision (including any steps ordered)**

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1. The complainant made two requests for information on two separate dates. One being for the full list of all members of the Assets and Facilities Department and the other for a copy of the Strategic Land Availability Assessment and associated site maps for March 2011. Cheshire East Council (council) initially refused to respond to the requests stating that the aggregated cost of this and previous requests were in excess of 18 hours. Since the Commissioner's involvement, the council has changed its response and has now refused to respond to both requests under section 14(1) of FOIA, as they deemed them to be vexatious. The Commissioner considers that the second request should have been considered under the EIR. The Commissioner therefore considered the application of the equivalent exception under EIR, regulation 12(4)(b), which relates to manifestly unreasonable requests.
2. The Commissioner's decision is that the council has correctly applied section 14(1) of the FOIA in this case, and that regulation 12(4)(b) of EIR is also engaged.
3. The Commissioner requires no steps to be taken.

**Request and response**

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4. On 20 February 2013 and the 22<sup>nd</sup> February 2013 the complainant made two requests for information under the FOIA which were:

20 February 2013

*"Please provide a full list [sic] of all members (Employees) of the "Assets and Facilities Department"[sic] team as discussed on the following section of the CEC website [http://www.cheshireeast.gov.uk/environment\\_and\\_planning/assets\\_and\\_facilities/what\\_we\\_do.aspx](http://www.cheshireeast.gov.uk/environment_and_planning/assets_and_facilities/what_we_do.aspx) Please provide as a minimum the titles, grades and names of each member of the team."*

22 February 2013

*"I note that the latest version (January 2013) of the Strategic Land Availability Assessment has been published by the council. I already have an electronic copy of the March 2012 Edition and associated site maps. Can you please provide a copy of the March 2011 version of this document and all of the associated site maps."*

5. The council responded on the 25 February 2013 refusing to provide the requested information. The council seemed to be relying on section 12 of the FOIA not to release the information due to aggregated costs from numerous requests over a six month period.
6. Following an internal review the council wrote to the complainant on 20 March 2013 maintaining its original position.

### **Scope of the case**

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7. The complainant contacted the Commissioner to complain about the way his requests for information had been handled. He asked the Commissioner to consider whether the council had correctly refused to respond to his requests.
8. Following contact from the Commissioner, the council withdrew its reliance on section 12 and amended its position for refusing to respond to the information requests, now relying on section 14(1) of the FOIA.
9. The Commissioner considers the scope of the case is to determine whether the council is correct in saying that it can refuse the requests as vexatious under section 14(1) of the FOIA. The Commissioner considers that the second request should have been considered under the EIR. The Commissioner therefore considered the application of the equivalent exception under EIR, regulation 12(4)(b), which relates to manifestly unreasonable requests.

## Reasons for decision

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### Are the EIR relevant?

10. 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.
11. It is apparent to the Commissioner that the request dated 22 February 2013 should have been considered under EIR, as it relates to a land availability assessment, matters that affect the environment. The Commissioner recognises that there are circumstances where the arguments used by an authority in support of section 14(1) of the FOIA might also be applicable to the application of 12(4)(b) of the EIR and this is one such example.

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

12. 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/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)

13. 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".*

14. Section 14 states that:

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

15. For clarity, the Commissioner's general approach to considering vexatious requests is broadly the same under both the FOIA and the EIR.
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 patently obvious when requests are vexatious. In cases where it is not so clear-cut, the key question to ask

is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. This will usually be a matter of objectively judging the evidence of the impact on the authority and weighing this against any evidence about the purpose and value of the request. Public authorities may also take into account the context and history of the request where relevant.

17. The council states that it has received 27 requests from the complainant since April 2011, 24 of these requests were made between the 3 September 2012 and 26 February 2013. The council argues that the cumulative effect of these requests imposes a significant burden on the authority in expense and distraction. It states that the requests in 2011 were for information relating to a court case involving the complainant, and following the conclusion of these matters in 2012 the complainant then recommenced making information requests around planning matters and the local plan. The council states that these questions have been exhaustive and drifted from one specific area into a wider geographical area in a fishing exercise.
18. The frequency of the requests made by the complainant between September 2012 and February 2013, were coming in at an average of approximately 4 requests a month. The council claims this volume is causing a disproportionate burden on it and it feels that the requests will continue to keep coming in this sort of frequency. The Commissioner considers that this averages out to 1 request a week over a 6 month period and that this level of requests for information would place a disproportionate burden on the council.
19. The council are of the opinion that by allowing further requests from the complainant, he will continue to submit them as regularly as he did between September 2012 and February 2013. The council has, as discussed in paragraphs 23 and 24, advised the complainant that the time for complying with all the requests was reaching a point of them considering whether the requests were accumulating more than 18 hours of work in responding. The Commissioner does consider for a council to be receiving, on average, one request per week from a single complainant over six months to be signs of a disproportionate burden being placed on its resources in terms of cost and time. As the council has stated, it does not appear apparent to the Commissioner that there would be an end to the regularity to the requests from the complainant. This demonstrates that the council will never be able to satisfy the complainant with any response it gives, and it would continue to receive requests as frequently as before.
20. The council states that when read individually, the requests are valid. However, when viewed together, the pattern becomes vexatious. The council sees several requests on the same theme being received within

days of each other. The fact that the requests overlap also demonstrates the complainant is not allowing the council time to respond to one request before another is sent in. This demonstrates to the Commissioner along with the 6 months of requests that a disproportionate burden is being placed on the council in dealing with the continuous requests. The Commissioner also recognises that up to the point of the council applying the vexatious exemption, the council have always provided a response to the complainant.

21. On receiving responses the council states that the complainant will challenge the accuracy of the content and find faults, and also questions staff as to whether they are sufficiently senior to answer the questions. The Commissioner was supplied with a selection of emails from the council to support its case. One example of fault finding provided by the council comprises an email from the complainant advising the council that there is a summation error on a chart supplied. Another email was the complainant asking for a supplied spreadsheet to be completed, as there were missing details. The council advised the complainant that the missing details were of school employees, and that information could not be given out. The complainant did not dispute that fact; he emailed back to confirm the information and advised that he did not realise that the senior staff salaries web page also included school employee details. The complainant has been making requests for pay grades and scales, and on reviewing the emails supplied by the council it seems to be mainly for senior staff and management salaries and pay scales.
22. The Commissioner expects councils and their staff to be robust when dealing with members of the public, and does not consider the evidence sent by the council to sufficiently demonstrate that the complainant is continuously finding faults and questioning the authority of staff in these instances.
23. The council states that in six weeks, between the 1 September and 15 October, the complainant made 15 separate FOI requests and the person dealing with the requests at the time wrote an email regarding the amount of time the requests were taking up advising that the appropriate limit for cost of compliance in responding to requests is set at 18 hours. The council advises that the complainant disputed this statement and continued to make further requests. The council states that the complainant then started by-passing the compliance team altogether and directed requests straight to the department that he required the information about. The council supplied the email trail of this communication and the complainant's response to it advising the cost of compliance. The complainant's response was:

*"Thankyou for your response. I assume your comments below on aggregating the time spent by officers responding to my requests*

*refer to the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. I am aware of these regulations and the limits imposed by them and trust you will comply with them accordingly."*

24. The email supplied to the Commissioner by the council showing this communication does not seem to be the complainant disputing the time being taken, more it was a statement clarifying whether the council were meaning "aggregating the time spent by officers responding" to the requests and trusting it will be complied with accordingly. The only other email supplied that disputes this was when the council originally applied section 12 of FOIA on 25 February 2013, and the complainant asked for an internal review on the decision. As a complainant has the right to request a review, the Commissioner considers it reasonable for the complainant to have disputed the application of section 12 at this point in time and to provide his arguments for this. However, it does demonstrate that the council engaged with the complainant about the amount of correspondence that was being submitted. When the council advised the complainant it was considering applying section 12 of the FOIA because of the time it was taking the council to deal with his requests, it did not deter the complainant in continuing to make frequent requests.
25. The council states that the complainant has made reference to information being required for "his research", but never made clear what this research is or its purpose. The council have surmised that as many of the requests relate to planning matters and the local plan, it feels the requests stem from the complainant's issues with drivers of cars who park and ignore traffic enforcement. The council states that although the complainant may genuinely be interested in future car parking provisions and car park charging policies, it deems the questions have become exhaustive and have drifted from a specific area Wilmslow to a wider geographical area, in a fishing exercise. The council state that these requests are accumulating from the history that the complainant has with the council and the court case mentioned previously.
26. The Commissioner is aware that generally the FOIA and EIR are considered to be applicant blind and public authorities cannot insist on knowing why an applicant wants information. However, this does not mean that an authority cannot take into account the wider context in which the request is made and any evidence that the applicant is willing to volunteer about the purpose behind their request.
27. The complainant has stated to the council, when he requested an internal review on the council's original decision to apply section 12 of the FOIA, that he had made 21 information requests on six different subject areas. Ten relating to the "Local Plan", seven relating to issues



surrounding the transfer of "Romanys Caravan", and a further 4 relating to separate individual subject areas. This does demonstrate to the Commissioner that the complainant will continue to make requests on specific subjects in an overlapping way, not allowing sufficient time for each question to be responded to by the council, and also shows that the complainant continually seeks further information on a subject from the council, even though responses are being given.

28. The council has advised that since they have refused to respond to the requests, the complainant has made an information request to the Local Government Ombudsman and to the ICO in relation to complaints received by them about the council. The council believes that this highlights the complainant's continued questioning of its authority via other organisations whilst being unable to contact the council directly on FOI matters.
29. The council has also advised the Commissioner that the complainant has been making FOI requests to neighbouring authorities about Cheshire East Council's work via "What Do they Know" website – in particular the Local Plan.
30. The Commissioner considers that when applying section 14(1) of FOIA to a request, a public authority must give detailed arguments as to what led to the requests being deemed as vexatious. The Commissioner notes that these information requests to other bodies were made after the council refused to respond to the complainant; so cannot be used as reasons to why the two requests were refused as vexatious or manifestly unreasonable.
31. The council state that the complainant will question an officer's ability to respond to him, by questioning their qualifications or whether they were senior enough to provide him with the requested information. The council advised that the complainant is particularly interested in organisational structures, job titles, grades and the names of the individual in particular posts. The council state that the complainant, once the information is provided looks for holes in the information and will point this out to the officer who provided the response. The Commissioner has considered the emails supplied by the council. He notes that two show that the complainant is making further requests for information off the back of information supplied. Another email shows the complainant pointing out a possible calculation error on a chart, and another shows the complainant is not satisfied that his request was fully answered and asking for it to be. Another email shows the complainant requesting the grade and level of delegated authority of a council officer along with the names, positions and roles of his line management structure after he received correspondence from that officer. The Commissioner on reviewing these emails does not consider that any of

them appear to particularly distressing or harassing, even before the fact that the Commissioner considers public officials should be relatively robust in dealing with requesters. Also if a response was not fully answered, which one was not, then the complainant would be in his rights to ask it to be. The emails where it shows the complainant is requesting further information off the back of other requests, the Commissioner would expect the council to provide more than two examples in terms of demonstrating the complainant is continually not satisfied after a request has been answered.

## **Conclusion**

32. The Commissioner recognises that the points raised by the council are strong arguments to apply section 14(1) of the FOIA and regulation 12(4)(b) of the EIR to the requests, however the Commissioner does not consider the evidence the council has supplied to back up its arguments about the complainant continually disputing responses, or questioning of authority sufficiently supports the arguments made, in terms of volume.
33. The area of the council's argument the Commissioner considers is sufficiently supported by strong evidence and considers carries significant weight is the volume of requests being made to it by the complainant and the overlapping frequency of them. The Commissioner is of the opinion that 24 information requests over a 6 month period constitutes a high volume of requests from one person, and the overlapping nature of them is not allowing the council time to deal with one request before another is made. Also, the council did advise the complainant of the time his requests were taking up, but this did not slow the complainant's requests. This demonstrates that there is an unjustified persistence in the way that the requests are being made to the council, and that it would be placing a significant burden on the council dealing with the requests in terms of expense and distraction to the council. Therefore the Commissioner has decided that the requests are vexatious and manifestly unreasonable and that the council are correct to rely on section 14(1) of FOIA and regulation 12(4)(b) of the EIR is also engaged in this case.

## **Public interest test**

34. Regulation 12(4)(b) is a qualified exemption and is therefore subject to the public interest test at regulation 12(1)(b) which states that information can only be withheld if in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosure.
35. As the Commissioner considers that the second request, dated 22 February 2013, that was refused by the council to be a request made



under the EIR. The Commissioner will go on to consider the public interest test to this request only.

### **Public interest arguments in favour of disclosing the information**

36. The Commissioner accepts that there is a strong interest in disclosure of environmental information in general as it promotes transparency and accountability for the decision taken by public authorities in matters concerning the environment.
37. The complainant has made it known to the council that he has been making the requests for his own research, and the council accept that when read individually the requests are not vexatious or manifestly unreasonable.

### **Public interest arguments in maintaining the exemption**

38. The council have argued that the complainant will continue to make information requests of a frequent and overlapping nature and even though it is answering his questions, there is an unjustified level of persistence from the complainant in terms of the volume of requests. Answering the question will not satisfy the complainant and he will continue to request more information just as frequently as before which will impose a further burden on the council in terms of expense and distraction to deal with the continuing request.
39. Having considered the evidence in this matter the Commissioner finds that the public interest test in openness, transparency, and the disclosure of environmental information, is outweighed by the public interest in avoiding the council from the burden of expense and distraction to answer a manifestly unreasonable request.
40. Therefore the Commissioner finds that, with regards to the complainant's request of 22 February 2013, regulation 12(4)(b) is engaged and so no further action is required by the council with this request.

## Right of appeal

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41. 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)

42. 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.
43. 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**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**