

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

Date: 10 September 2013

Public Authority: Weaverham Parish Council
Address: Weaverham Community Centre
Russet Road
Weaverham
Northwich
Cheshire
CW8 3HY

Decision (including any steps ordered)

1. The complainant has requested all documents pertaining to the purchase and upkeep of a range of sites owned by Weaverham Parish Council ("the council"). The council refused to comply with the request as it considered it to be vexatious under section 14(1) of the Freedom of Information Act ("the FOIA").
2. The Commissioner's decision is that the council has correctly applied 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 16 November 2012 and 15 January 2013, the complainant has made nine information requests to the council for documents dating from 1946 to date. One of these requests was extremely wide-ranging, as it specified a range of different types of documents that the complainant wished to access; an example of which is "*All loan/mortgage applications/land searches/letters of correspondence*". The majority of the information asked for within these nine requests can be seen to relate to the council's ownership of land and assets. The council accepted these nine requests and provided responses.

5. On 16 January 2013, the complainant made his tenth request as follows:

"To conclude and for the benefit of the audit trail and the full WPC that I now ask you, and by way of the FOI Act, to provide me copies of all documentation relating to WPC purchase and upkeep of the following lands and buildings;

[a] Russet Road Play Park

[b] allotments {rear of Russet Road Play Park}

[c] Car Park to Doctors Surgery – Muga & Car Parks Only

[e] Lake House Field – Land, including the dog run area and copse Fencing and Gates {Lake House Field already applied for}

[f] Plantation {Owley Wood Road} Land Fencing and Bollards

[g] Barrymore Institute {Forest Street} Land and Building

In keeping with the FOI Act I am entitled to receive all of this information within 20 working days of today. I would be most grateful to you if you would kindly agree to email me the time, date and location that I am able to collect this raft of information from you or your nominated agent."

6. The council responded on 23 January 2013. It stated that it considered the request to be vexatious under section 14 of the FOIA.
7. The complainant requested an internal review on 13 March 2013.
8. The council completed its internal review on 28 March 2013. It stated that it wished to maintain its position.

Scope of the case

9. The complainant contacted the Commissioner on 1 February 2013 to initially complain about the way his requests for information were being handled. Upon the council's refusal of his request of the 16 January 2013, he asked the Commissioner to consider whether the council had correctly refused to respond to his request.
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 information about the upkeep of the Barrymore Institute), 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 upkeep of public sites. 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 and history of its relationship with the requester when this is relevant.
17. In this particular case, a number of prior requests have been made to the authority over a short period of time. These requests have been for information relating to varied parish council business dating from 1946 onwards, with an emphasis on information relating to the council's ownership of land, buildings and other assets. In addition to these requests, there has been on-going correspondence between the parties on a range of issues, in addition to meetings on the council's premises.

The complainant's position

18. The complainant began communicating with the council in November 2012 as part of his research into local history. In particular, the complainant appeared to be interested in issues of post-war land ownership and cost, and requested access to the council's minutes for 1946-1954. Additionally, he made requests for original land costs and specific title deeds.
19. In December 2012 the complainant made a range of broader requests for information, a proportion of which extended beyond the topic he was originally researching. Such requests included those for council minutes of 1957-1965; all known correspondence with another public authority; all known correspondence with the authority's solicitors; and all known deeds of conveyance. In this period the complainant also made requests for information pertaining to the council's storage of its documents, which appear to be due to his concerns that documents had been mislaid or lost by the council in the past.
20. The complainant further corresponded with the authority in January 2013 over information that he had been provided with, or that the authority was still attempting to retrieve from its solicitors. Further requests for information were also made, such as that for the council's financial accounts for 2007 to 2011, along with further specified title deeds and plans.
21. Upon making a request on 16 January 2013 for all documents relating to the authority's purchase and maintenance of a range of sites, the

complainant was advised that the council considered the requests for information relating to the council's ownership of land to have become obsessive and vexatious.

The council's position

22. The council informed the complainant on 23 January 2013 that it considered his requests to have become obsessive and vexatious. The council stated that had made information available where possible and had informed the complainant when efforts were being made to obtain documents from the council's solicitors.
23. In subsequent correspondence with the Commissioner, the council provided further information about its decision to refuse the request including copies of further correspondence between the complainant and itself prior to the request made on the 16 January 2013.
24. The council has stated that information has been provided in response to the complainant's past requests, and where information was either not held or being sought at the council's solicitors, this was explained. The council has explained to the Commissioner that the subject matter of many requests overlapped, particularly those requesting the council's title deeds, and that while the council was attempting to locate the requested documents from its past and present solicitors, the complainant would submit repeated requests for the same or similar information. The complainant's request of the 16 January 2013 represents a continuation of previous requests for deeds, and led to the council's decision that the requests had become repeated and obsessive.
25. The council has stressed to the Commissioner that it employs only one member of staff as the Parish Clerk ("the Clerk") for 18 hours per week, and that the complainant's requests placed a growing burden on them. The council detailed that while the Clerk initially made all attempts to meet the complainant's requests, the nature of later requests for information was placing a burden on the Clerk due to the broadness of some of the complainant's requests, such as that for all correspondence between the council and other bodies. The council has also detailed the time demands on the Clerk to assess requested documents for personal data. The Clerk attempted to outline the difficulties that she faced in two emails to the complainant, in which she explained her need to ensure compliance with relevant legislation, and that she was struggling to satisfy the complainant's requests due to their being submitted to different individuals across the council in a scattergun approach. The council has stated that requests continued to be made, both verbally and in writing, and that members of the council noted their concerns over the ability of the Clerk to undertake her usual duties while managing the complainant's requests. The council considers that

continuing to meet the complainant's requests would therefore cause an unjustified disruption of the council's public function.

26. The council has also stated that the complainant's requests were causing personal distress to the Clerk, who had throughout the requests attempted to be accommodating to the complainant. The council perceives that that the language used by the complainant in the correspondence changed from friendly and investigative to derogatory and objectionable, and that he implied that the Clerk was purposefully withholding information. The council have further noted that the complainant questioned a councillor over the council's decision to employ the individual acting as Clerk, and that the council had agreed that the Clerk must not meet with the complainant alone.
27. Lastly, the council believes that the complainant is undertaking research into not only itself, but also other local parish councils, with the intention of identifying wrongdoing by district and borough councils from 1946 onwards. The council believes that it is the subject of a 'fishing' request, and that the resources it would use to meet the requests is disproportionate to any potential outcome of the complainant's research.

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, the context of the request, and the burden upon the public authority's resources.

The purpose and value of the request

30. In this case the complainant has requested information that can be recognised as having a clear public value, as it relates to the current landholdings, buildings and financial activity of the council. As a public authority, the council should strive to ensure that information pertaining to its assets and financial activity is transparent and a matter of public record, as it is logical that the public would have a strong interest in such issues.
31. However, whilst the complainant's request can be recognised as having clear public value, it can also be perceived that a proportion of the complainant's previous requests appear to have no logical relationship to each other when considered as a whole, and nor do a proportion of the requests appear to be relevant to the complainant's initially stated aims. While the FOIA is generally considered to be applicant blind, in cases where a request is potentially vexatious or manifestly unreasonable it can be necessary to consider the comments and known aims of the complainant as to the purpose of the request. In this case, the varied previous requests and further information provided by the complainant do not support the notion that that complainant is pursuing specific information. The Commissioner has therefore concluded that there is limited purpose behind the request.

The context of the request

32. In this particular case, the Commissioner considered the context of the request against the complainant's previous requests and correspondence. The Commissioner identified that the complainant's requests progressed from specific requests for detailed information to broad and overarching requests for whole collections of documents regardless of their content. Initially, the complainant's requests appear to be for historic information pertaining to the ownership of land in the post-war period, but then appear to become more general and potentially voluminous; akin to seeking areas for investigation as opposed to seeking information on one topic. In addition, there are requests for information pertaining to the internal business of the council which do not bear a logical relationship to the other requests for older documents pertaining to land ownership. The clearest examples of these are requests for information relating to the council's decision not to purchase a fireproof safe in 2008, or the council's payment and receipt accounts for 2007 to 2011. The request for information of varying topics would suggest that the requests are being used in order to identify, or 'fish', for further areas of investigation into the council's conduct. It appears that the primary purpose of the varied requests is a fishing expedition to uncover maladministration of any sort by the council, rather than to reveal evidence of specific suspected wrongdoing.

The Commissioner has therefore concluded that there is no serious line of enquiry that underlies the request.

33. In conjunction with this, the Commissioner has also noted the council's concern that it has become the subject of a 'round robin' activity. The council has stated that it believes the complainant to have made similar requests for information to neighbouring parish, town and borough councils in order to uncover wrongdoing in the past. Whilst the council has not provided any evidence relating to this, the Commissioner is aware that the complainant has submitted similar requests to other local councils. The Commissioner considers that the existence of these similar requests supports the view of the council that it is the subject of a 'round robin' activity on the part of the complainant.

The burden upon the public authority

34. Incorporated in the consideration of proportionality, is the need to consider the burden that the complainant's request places on the council, and whether this exceeds the public value of the requests. In this case, the public authority is a parish council which employs one individual for 18 hours per week to act as its Clerk. The council has explained that its members are concerned that managing the complainant's requests is taking the clerk away from her other paid duties, which will therefore affect the council's ability to provide a public service and maintain its daily operation. The Commissioner finds this to be a convincing argument that the requests are burdensome, particularly in light of the ten information requests that were submitted in a 2 month period (of which the council was closed for a two week period during Christmas). The scattergun approach to contacting different members of the council further makes the requests more burdensome upon the council, as the Clerk must ensure that administrative procedures are properly followed to keep abreast of the complainant's requests and correspondence to different individuals.
35. In his consideration of this aspect, the Commissioner has specifically considered the resources required to further comply with the complainant's requests. The council have explained to the Commissioner that to meet the request of the 16 January 2013, which is partly a repeat of the complainant's previous requests, would cause an unjustified burden on the council. The council has explained that while enquiries have been made to locate the requested documents for the complainant, it has not yet begun the process of retrieving them. The council identified that it would require the Clerk to visit three firms of solicitors in order to inspect and collect files, before assessing each document to ensure that no personal data was recorded on them. Upon receiving the complainant's request of the 16 January 2013, the Council decided to apply section 14 of the FOIA and to stop the process of

collating the requested documents. The Commissioner has identified that the request of the 16 January 2013 is partly a repeat of previous requests, as it seeks the documents relating to the councils purchase of specific land. This is information that the complainant has already partly sought in a previous request for "*All Deeds of Conveyance and attached plan's*" of the 6 December 2012. The Commissioner therefore understands that the council has already taken the necessary steps to locate the documents that the complainant has previously requested. However, given the 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 continuing to attempt to provide the requested information would cause an unjustified burden upon the council.

Conclusion

36. While there is a public interest in ensuring that information pertaining to the council's purchase and upkeep of public 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. The Commissioner has identified that the public interest would need to be substantial enough to justify the severe impact that meeting this broad and overarching information request would have on the council's operation. Responding to the request would divert the Clerk away from her normal duties for an extended period of time, preventing her from ensuring the proper administration of the council for which she is the only administrative staff. Correspondingly, the complainant has not provided any evidence to the Commissioner that provides an overarching rationale for the purpose of his request, or of the public interest in it being met. Indeed, the varied nature of the complainants previous requests makes it seem unlikely that he is pursuing a reasonable line of enquiry, and would suggest that the right of access to information is being abused for the purpose of seeking alleged 'wrongdoing' on the part of the council in the past. Should the council respond to the complainant's latest request, and therefore divert its limited staff resources as outlined above, it would prevent the council from addressing serious and purposeful information requests on behalf of other individuals, as well as maintaining its core functions as a local public authority. Having reviewed these factors, the Commissioner considers that it is more probable than not that the council's refusal of the complainant's request was correct.

Right of appeal

37. 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

38. 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.
39. 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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