

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

Date: 26 November 2013

Public Authority: Newark and Sherwood District Council
Address: Kelham Hall
Kelham
Newark-On-Trent
Nottinghamshire
NG23 5QX

Decision (including any steps ordered)

1. The complainant has requested information from Newark and Sherwood District Council ("the council") that relates to planning applications made for an area of land. 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. On 29 January 2013, the complainant wrote to a council officer and requested the following information:

"...your professional qualifications and also those of your senior colleagues currently serving:

1. *[redacted name] – Chairman Planning*
2. *[redacted name] – Monitoring Officer and head of legal services*
3. *[redacted name] – The Chief Executive and monitoring officer*

Would you please also explain the "conflict of interest" that was verbally referred to at my meeting with you about 10 months ago which led to [redacted name] assuming the role of Monitoring Officer."

5. The council responded on 26 February 2013. It issued a refusal notice citing section 14(1) and 14(2) of the FOIA, which provide exclusions for vexatious and repeated requests.
6. The complainant subsequently requested an internal review by telephone. The council provided this on 28 March 2013, and upheld its position.

Scope of the case

7. The complainant contacted the Commissioner on 15 May 2013 to contest the grounds of the council's refusal of his request.
8. The Commissioner identified that the council's refusal should have cited both the FOIA and the EIR. While part of the information requested may fall under the FOIA (such as the personal qualifications of named council officers), the substantive matter means that any remaining information should be considered under the terms of 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?

9. 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 planning applications and council staff who have been involved in the decision making and review process. This can be clearly 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

10. 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;"

11. 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."

12. 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.

13. 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

14. 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.

15. While section 14(1) of the FOIA effectively removes the duty to comply with a request, regulation 12(4)(b) of the EIR only provides an exception. As such, the EIR explicitly requires a public authority to apply a public interest test, in accordance with regulation 12(1)(b), before deciding whether to maintain the exception. The Commissioner accepts that public interest factors, such as proportionality and the value of the request, will have already been considered by a public authority in deciding whether to engage the exception, and that a public authority is likely to be able to 'carry through' the relevant considerations into the

public interest test. However, regulation 12(2) of the EIR specifically states that a public authority must apply a presumption in favour of disclosure. In effect, this means that the exception can only be maintained if the public interest in withholding the information outweighs the public interest in disclosure.

The interaction between the parties

16. Having reviewed the chronology and content of the available documents, the Commissioner understands that the council refused a planning application made by the complainant in 1972, and that the then Department of the Environment upheld this decision when appealed in 1974. The area of land for which the planning permission was sought was subsequently sold by the complainant to another party, who then made a new application for planning permission, which on an unknown future date was approved by the council.
17. While the exact dates are not apparent from the available documents, the Commissioner understands that the complainant subsequently contacted the council in the 1990's or early 2000's to make allegations of maladministration in relation to the above matter. This resulted in the circumstances of the planning applications being reviewed by the then Chief Executive. During the same period of time, it is understood that the complainant also referred the matter to the Metropolitan Police, who after an investigation found there to be no grounds for action.
18. The complainant started to seek information from the council on 31 January 2007, when he made a request for all information pertaining to the planning applications and the area of land that they relate to, as well as all records concerning the investigation by the Metropolitan Police. The council provided a comprehensive response to this request on 27 February 2007, in which it provided 83 electronic files.
19. After an intervening period of nearly 2 years, the complainant contacted the council again on 11 February 2009, and requested all correspondence between the council and the Metropolitan Police on the matter, as well as any related correspondence and remarks provided by the District Auditor. The council provided information in response to this request on 31 March 2009, which included information already disclosed for the previous request. Three further requests were then made by the complainant on 3 April, 11 May and 7 August of the same year. These requests sought information about the complainant's refused planning application of 1972, as well as information about council officers who the Commissioner assumes were involved in the Chief Executive's review of the matter. Following the council's responses to these requests, the complainant then wrote to the council on 9 December 2009, in which it is understood he asked for an independent enquiry to be conducted. The

new Chief Executive responded in January 2010 following a further review of the matter, and explained that there was no evidence of maladministration on the part of the council, and that there were no grounds for an independent inquiry being formed. It is further understood that the complainant also referred the matter to the Local Government Ombudsman during this time, who also concluded that there were no grounds for further action.

20. After another intervening period, the complainant contacted the council further on 19 August 2011, and again requested correspondence between the council and Metropolitan Police, as well as any other body who had been involved in the matter. He also requested a copy of the decision that the Local Government Ombudsman had issued. The council provided a response to this on 7 September 2011, in which it disclosed relevant information, with the exception of that which had already been provided under previous requests. Further to this response, it is understood that the council arranged a meeting between the complainant and the Chief Executive on 27 September 2011 to attempt to informally resolve the matter.
21. In mid-January 2013, the complainant contacted the council further through telephone calls, in which he requested the qualifications of senior council officers, and advised that he wanted his complaint to be re-investigated. He subsequently submitted a written request on 29 January 2013, in which he requested information about named officers who had been involved in the council's own reviews of the matter. The council subsequently refused this request under section 14(1) and 14(2) of the FOIA.

The complainant's position

22. It is evident to the Commissioner that the complainant strongly perceives that he has been the subject of unfair practice, and has sought information from the council in an attempt to uncover the maladministration that he believes has taken place. The Commissioner is particularly aware that the matter is likely to have had financial implications for the complainant, and that the refusal of his planning application may have contributed to his decision to transfer the ownership of his land to another party.

The council's position

23. The council has explained to the Commissioner that it accepts that the complainant's requests have a serious purpose, and that it has attempted to resolve the matter through its sustained correspondence and a recent meeting with the current Chief Executive. However, the council now considers that the complainant is unwilling to accept the

information and answers that he has been provided with, and that continued engagement with the complainant is highly likely to generate further requests and enquiries, to which the complainant will still not receive an outcome that is likely to be satisfactory to him.

24. The council has further referred the Commissioner to the manner in which the complainant's requests have broadened through time, and that in addition to requesting information that has previously been disclosed, have also started to include requests for information about members of past and current council staff who have been involved in the matter. In particular, the council has referred the Commissioner to the request made by the complainant on 29 January 2013, which it considers to be of inherently limited value in relation to the substantive matter.

The Commissioner's analysis

25. 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.
26. 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

27. Having reviewed the correspondence between the complainant and the council, the Commissioner has identified that six information requests were submitted to the council and responded to, prior to the council's refusal. The requests have sought information about the council's refusal of the complainant's planning application, the subsequent granting of permission to another party, council staff who have been involved in these actions, and the subsequent reviews and investigations by the

council, Metropolitan Police and Local Government Ombudsman. Whilst the requests can be seen to differ in scope and wording, the specific subject matter has meant that some of these requests are for substantially the same information to that which has already been provided. The council has therefore provided any additional information that falls within the scope of the request, or else has issued a refusal notice explaining the basis of any exemptions that have been applied.

28. The Commissioner is aware, through the submissions of both the council and the complainant, that the substantive matter has already been the subject of review by two Chief Executives of the council, the Metropolitan Police, and the Local Government Ombudsman. It is understood that these investigations have concluded that there is no basis for further action against the council. While the Commissioner appreciates that the issue remains important to the complainant, he does not consider that the information rights provided by the FOIA and EIR should be used as a means of forcing continued engagement from the council in relation to this matter.
29. Based on these factors, the Commissioner has concluded that there is limited public value in the request, which seeks information that is only tenuously linked to the substantive matter that the complainant is concerned about, which itself has already been investigated and concluded by the proper public authorities.

The burden upon the council

30. Having reviewed the correspondence between the complainant the council, the Commissioner has identified that significant public resources have already been used in responding to the complainant's prior information requests and correspondence. Having noted the extended length of time in which this communication has been spread out, the Commissioner considers that this would have placed a greater burden on the council, who have repeatedly needed to revisit already aged material in order to provide valid and clear responses to the complainant's requests.
31. The Commissioner has concluded that responding to the complainant's request, and thereby further engaging with the complainant in relation to the substantive matter, would place an unjustified burden on the council's resources.

The public interest test

32. Regulation 12(1)(b) of the EIR provides that:

"...a public authority may refuse to disclose environmental information requested if-

(b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information."

33. In the circumstances of this case, the Commissioner has identified that the council considered the public interest factors present in the request, and concluded that the burden on public resources outweighed the limited public value in the request.
34. Having considered the evidence provided in this matter, the Commissioner concurs with this view and finds that the public interest in openness, transparency and the disclosure of environmental information, is outweighed by the public interest in preventing public resources being diverted to meet the complainant's request.

Conclusion

35. While the Commissioner appreciates that the substantive matter remains important to the complainant, he considers that the public value in his request being met is inherently limited. The matter has already been reviewed twice by the council itself in order to address the allegations that the complainant has made, and subsequent complaints to both the Metropolitan Police and the Local Government Ombudsman have not been successful, which would indicate to the Commissioner that there is little or no plausible basis for suspicion on the part of the complainant.
36. The Commissioner considers that should the council respond to the complainant's request it would place further burden upon the council, who would be required to divert public resources so that the matter could be revisited. While the Commissioner appreciates that there is a clear public interest in allegations of maladministration being properly addressed, the evidence in this case suggests that the information rights provided by the FOIA and EIR are being misused to force continued engagement from the council.
37. Having considered the limited public value of the request in conjunction with the burden on the council's resources, the Commissioner has concluded that the council's refusal of the request as manifestly unreasonable on vexatious grounds was correct.
38. 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

39. 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

40. 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.
41. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

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