

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 6 October 2014

Public Authority: Hampshire County Council

Address: The Castle
Winchester
Hampshire
SO23 8UJ

Decision (including any steps ordered)

1. The complainant has requested information on a 20 mph zone in Whitchurch, Hampshire.
2. Hampshire County Council ('the Council') refused to provide the requested information relying on regulation 12(4)(b) of the EIR.
3. The Commissioner's decision is that the Council has correctly applied regulation 12(4)(b) of the EIR.
4. The Commissioner does not require the Council to take any steps.

Request and response

5. On 21 November 2013, the complainant wrote to Council and requested information in the following terms:

"This is an FOI relating to the 20mph zone in Whitchurch. I would like to know, please:

1. (a) How many people signed the petition presented to HCC to include Lynch Hill Park in the 20mph scheme's zone; and (b) when it was submitted to the council?

2. What are the results from the second speed survey conducted along

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Lynch Hill Park (was the measurement box in the same position as the first study?) ie a spreadsheet showing what speed vehicles were recorded doing at what day/time.

3. Could you provide me with all correspondence and comments relating to the reinstatement of Lynch Hill Park into the scheme? ie from moment petition received by the council (1b above).

4. I understand the latest revision (P4) is being advertised until 6 December 2013 - how long will it be between then and the start of implementation assuming no objections? If there are objections then how long will it take to consider them?

4 (alternative). If no.4 above cannot be easily answered then, instead, please tell me how long has it taken for each of the other pilot 20mph schemes to progress to implementation after being advertised? How long did each of those actual installations take?

5. Were other areas in Whitchurch considered again for inclusion in the 20mph zone? If so, then why were they rejected again? eg in front of All Hallows on Church Street; B3400 at Hillside; Hillside; Newbury Road at Station Road; Bere Hill; Winchester Road at the Millennium Meadow entrance; Park View / Wells Lane.

6. Has anyone come across a first revision of the 'location plan'? I was told in a previous FOI that it was blank; but since then I have heard that a non-blank version did exist at some point."

6. The Council responded on 20 December 2013. It stated that the request was manifestly unreasonable. In its response to an earlier request the Council had explained to the complainant on 14 June 2013 that any further requests on the same topic would be considered to be manifestly unreasonable.
7. The complainant requested an internal review on 2 January 2014. The Council did not respond.

Scope of the case

8. The complainant contacted the Commissioner on 11 February 2014 to complain about the way his request for information had been handled. The complainant explained that his local County Councillor was not responding to his requests and had directed him to contact the Council with his queries on services provided by the Council. He considers that if

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the County Councillor had provided information to him or to the Town Council:

"it would not have been necessary for me to persevere with requesting responses."

9. The Commissioner considers the scope of this case to be whether the Council was correct in its application of regulation 12(4)(b) to the request.

Reasons for decision

Regulation 12(4)(b) – Manifestly unreasonable

10. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose environmental information to the extent that the request is manifestly unreasonable.
11. There is no definition of 'manifestly unreasonable' under the EIR. The Commissioner considers that 'manifestly' implies that the request should be 'clearly' unreasonable. A request can be manifestly unreasonable for two reasons: firstly, if it is vexatious and secondly where it would incur unreasonable costs for a public authority or an unreasonable diversion of resources. In this case it is the Council's position that the request is vexatious.
12. The term "vexatious" is not defined in the FOIA. The Upper Tribunal (Information Rights) considered the issue of vexatious requests in the recent case of *The Information Commissioner and Devon County Council vs Mr Alan Dransfield (GIA/3037/2011)* and concluded that the term could be defined as "manifestly unjustified, inappropriate or improper use of a formal procedure."
13. The Dransfield case identified four factors that are likely to be relevant in vexatious requests:
 - the burden imposed by the request (on the public authority and its staff)
 - the motive of the requester
 - harassment or distress caused to staff
 - the value or serious purpose of the request
14. The Upper Tribunal decision referenced above established the concepts of 'proportionality' and 'justification' as central to any consideration of whether a request is vexatious. The Commissioner considers that the

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key question to ask in consideration of whether a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear the Commissioner considers that a public authority should weigh the impact on the authority of complying with the request and balance this against the purpose and value of the request. In doing this, public authorities will inevitably need to take into account the wider factors such as the background and history of the request.

Disproportionate or unjustified level of disruption, irritation or distress

15. The Council explained to the Commissioner that the complainant has contacted the Council frequently since the beginning of 2009 primarily about matters concerned with highways and cycling and associated health and safety issues.
16. The Council has provided the Commissioner with a breakdown of the various contacts it has received from the complainant since 2011. The complainant made 28 'formal' EIR/FOIA requests, over 20 'business as usual' requests and numerous undocumented email contacts. The Council explained that each request comprises numerous detailed points requiring significant time to answer. During 2013, six requests comprising 30 detailed questions were received asking for considerable volumes of information on highways and cycling in Whitchurch.
17. In respect of the email contacts the Council cited an example of the complainant contacting one particular officer in the Environment Department, involved with implementing the 20mph schemes within the county, an average of twice a month.
18. The Commissioner notes that the complainant appears to want an on-going dialogue with the Council in which he is able to comment on the information provided and follow on with further requests, questions or debate. He comments on the Council's actions and expects regular feedback. By way of example the Council referred the Commissioner to an email exchange between the complainant and the Council on the topic of a junior road safety scheme and high visibility jackets. The exchange began as a 'business as usual' query, the Road Safety Manager responded which then resulted in further questions. Subsequently the Council provided a detailed formal response. Following this the complainant's response was; "Is this all HCC uses to justify its campaign? Seriously?"
19. After three detailed requests on the 20 mph pilot scheme in the first six months of 2013 the Council explained in June 2013 that it intended to

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consider any further requests on the 20 mph pilot scheme manifestly unreasonable. The complainant next requested information in September 2013 concerning highways and traffic but not specifically addressing the 20 mph scheme. The request of 21 November 2013 revisited the 20 mph scheme.

20. The complainant has explained to the Commissioner that he does not consider his requests to be manifestly unreasonable. He explained that his requests in respect of the 20 mph scheme were as a result of the Council missing its "self-imposed dates" for completion, insufficient information published on the progress of the scheme, changes to the scheme and a named County Councillor advising the complainant to address his queries to the "relevant County Council officer first on queries relating to services provided by the County Council".
21. The Council advised the Commissioner that the complainant had sent: "a very heavy volume of communications via email and social media to his local County Council member. These number in the hundreds from 2009 onwards (considerably more than any other constituent)". The Council informed the Commissioner that the Councillor advised the complainant to contact County/Town Council officers in first instance "to allow him to spend a more appropriate proportion of his time to assist his other constituents".
22. The Council explained to the Commissioner that the complainant demonstrates impatience in his expectations of how quickly the Council is able to respond to his questions. It quoted his comment in respect of a request, handled outside of the EIR/FOIA regime, about road closure:

"response within 5 working days not good enough – time is of the essence."
23. The Commissioner finds that the resources needed to comply with the complainant's requests and communications have created a significant burden for the Council which has impacted on its ability to deal with other business. He considers that complying with the requests in this case would add further to that burden and mean resources continue to be diverted from other business.

Unreasonable persistence

24. The complainant has acknowledged his perseverance with requesting responses but considers this to be necessary as his County Councillor had not provided information to him or the Town Council and the Council's responses were not to his satisfaction.

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25. The Council considers there to be a pattern of dissatisfaction with the responses it provides which leads to either further 'formal requests', business as usual requests or requests to his County Councillor.
26. The Commissioner considers that the complainant has demonstrated a pattern of behaviour which suggests that he is unlikely to be satisfied by a response from the Council. One response leads to another request or comment, as shown in the example of paragraph 18. The Commissioner accepts that officers dealing with the complainant's correspondence may be distressed and frustrated by the difficulty in achieving closure to the requests.
27. Although the Commissioner accepts that the complainant's intentions, to some extent, may be public spirited, the consequence of his persistence is a public authority compromising its service delivery to others to deal with one individual's contacts. The Commissioner also notes that the complainant's requests often fall close to becoming manifestly unreasonable in terms of unreasonable costs, as referenced above in paragraph 11.

Purpose and value of the request

28. The Commissioner accepts that some of the complainant's requests may be said to have a serious purpose and value in the public interest. Road safety and provision of safe cycling on public highways is an important responsibility of the Council and has significance for the general public.
29. The Commissioner notes from his reading of the complainant's website his strong interest in cycling and road safety, as demonstrated by his campaigning articles. However, the Commissioner considers that the complainant's personal interests and concerns cannot be allowed to create an unjustified burden on the Council.
30. Notwithstanding his comments in paragraph 28 the Commissioner notes that some of the complainant's requests appear to have little value. The Council demonstrated this with respect to the request referenced in paragraph 18. The Council explained:

"It is difficult to see what public value there might be in putting the Council to time and expense of justifying why it promotes the wearing of high visibility jackets on the roads beyond confirming that it follows Department of Transport guidance and the Highway Code."

Conclusion – engagement of the exception

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31. The Commissioner is satisfied that if the Council responded to the request in this case the complainant is unlikely to be satisfied and would more than likely continue to make further requests. This has been demonstrated by the complainant making a request on the same matters whilst the Commissioner has been investigating this complaint.
32. After considering the arguments put forward by the Council and the complainant, together with the context in which the request was made the Commissioner's decision is that the request is vexatious. Consequently the Commissioner is satisfied that the Council has correctly applied regulation 12(4)(b).

Public interest test

33. The Commissioner has gone on to consider whether the public interest in maintaining the exception outweighs the public interest in disclosing the information.
34. In the circumstances of this case (as explained in paragraph 6), the Council did not explicitly undertake a public interest test. However, having considered the Council's arguments, the Commissioner is satisfied that the Council had implicitly considered the public interest factors in its refusal of the complainant's request.
35. The Council argued that there is little or no public value in the Council spending more time and expense in responding to the complainant's request which is unlikely to satisfy the complainant's on-going scrutiny of the Council's operation.
36. 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 further public resources being diverted to respond to the complainant's request. The complainant's personal appetite for the requested information cannot be weighed in support of its disclosure in this case.
37. While recognising that there is a legitimate public interest in the topics covered by the complainant's requests, the Commissioner considers that in the circumstances of this particular case the public interest in openness has been sufficiently satisfied by the Council's responses to previous requests and the opportunity for public comment referenced in point 4 of the request.
38. Taking all of the circumstances of this case into account, the Commissioner has concluded that regulation 12(4)(b) is maintained.

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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

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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