

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 13 January 2014

**Public Authority:** Malvern Hills District Council

**Address:** Council House  
Avenue Road  
Malvern  
WR14 3AF

#### **Decision (including any steps ordered)**

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1. The complainant submitted a set of requests to Malvern Hills District Council (the Council) about its refuse and recycling policy. The Council refused to respond to these requests on the basis of section 14(1) of FOIA because it considered them to be vexatious.
2. The Commissioner has concluded that the Council is entitled to refuse to comply with requests 1, 2, 4, 10, 11, 12, 13, 14, 20 and 22 on the basis of section 14(1).
3. However, the Commissioner has also concluded that the Council is not entitled to rely on section 14(1) to refuse to answer requests 7, 9, 15, 16, 17, 18 and 19.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
  - Provide a fresh response under FOIA to the requests numbered 7, 9, 15, 16, 17, 18 and 19 which the complainant submitted to the Council on 14 June 2013.
5. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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6. The complainant contacted the Council on the following dates seeking various pieces of information concerning the Council's refuse and recycling policy:
  - 13 February 2013; 27 February 2013; 19 March 2013; 7 April 2013.
7. For ease of reference, the Commissioner has referred to these four pieces of correspondence as 'request A', 'request B', 'request C' and 'request D' albeit that he recognises that that each piece of correspondence included numerous individual questions.
8. The Council responded to these pieces of correspondence on the following dates:
  - 19 February; 8 March; 28 March; 18 April.
9. In submitting these four letters the complainant did not refer to FOIA and it is the Commissioner's understanding that these requests were simply dealt with by the Council as 'normal course of business enquiries'.
10. The complainant then submitted a letter on 3 May 2013 ('request E') which contained a further 22 requests for information. In this correspondence, she explicitly confirmed that she wished to be provided with a response to these latest requests under FOIA.
11. The Council responded to these requests on 21 May 2013.
12. The complainant was dissatisfied with the Council's response of 21 May 2013. She therefore decided to submit a further set of requests to the Council on 14 June 2013 ('requests F').<sup>1</sup>
13. The Council responded on 19 June 2013 and explained that it considered this latest set of requests to be vexatious and thus they were being refused on the basis of section 14(1) of FOIA.
14. The complainant contacted the Council on 12 July 2013 in order to ask for an internal review of this decision to be undertaken.

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<sup>1</sup> Requests E, the Council's responses to these requests and requests F are all detailed in the attached annex.

15. The Council informed her of the outcome of the review on 18 July 2013; the review concluded that section 14(1) had been applied correctly.

### **Scope of the case**

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16. The complainant contacted the Commissioner on 31 July 2013 to complain about the Council's decision to refuse to comply with set of requests F on the basis of section 14(1). She provided the Commissioner with detailed submissions to support her view that this section had been incorrectly applied and these are set out in analysis below.

### **Reasons for decision**

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17. Section 14(1) allows a public authority to refuse to comply with a request if it is vexatious. The Commissioner's guidance explains that the purpose of section 14(1) is to protect public authorities by allowing them to refuse any requests which have the potential to cause a **disproportionate** or **unjustified** level of disruption, irritation or distress.
18. This will usually involve weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request. This should be judged as objectively as possible; in other words, would a reasonable person think that the purpose and value are enough to justify the impact on the public authority. Where relevant, this will involve the need to take into account wider factors such as the background and history of the request.

### The Council's position

19. The Council argued that it had made all reasonable efforts to respond to the complainant's various questions and to provide information and documents requested. The Council noted that under FOIA it was only under a duty to provide recorded information that it held; nevertheless it had tried to provide her with the answers sought as far as possible. However, the Council suggested that the complainant disagreed with its recycling policy and that further FOI requests or correspondence were not the appropriate avenue to debate this.
20. The Council acknowledged that the requests were for a legitimate purpose, but argued that the level of contact and effort required to respond is a disproportionate and unjustified distraction from the Council's core functions.

21. In making this decision the Council explained that it had taken into account the Commissioner's guidance on section 14(1) and in particular had taken into account:
- the burden (and likely further burden) on the Council's staff and resources in responding further to requests F, which is more than three pages long and covers 22 points, all of which the Council feels it had previously addressed;
  - the fact that the complainant's requests all seem to stem from a disagreement with Council policy, which it had attempted to address but which further requests cannot resolve;
  - the argumentative tone of the complainant's correspondence, and its likely effect on staff;
  - the complainant's unwillingness to accept that information has been provided and persistence in making repeated similar requests.
  - The requests display an unreasonably entrenched position given the complainant's repeated reluctance to use the information that had been provided or signposted to her.
22. The Council noted that it had taken into account the nature of correspondence as a whole in deciding to cite section 14(1) as a basis to refuse set of requests F. It also noted that it had taken into account the fact that she had made her views known to individual Councillors and the Council itself.

#### The complainant's position

23. The complainant provided the Commissioner with detailed submissions to support her view that set out of requests F were not vexatious. The Commissioner has summarised these submissions below.
24. The complainant explained that she was concerned that the Council could be in breach of the European Waste Directive if it moved from two stream recycling collection to fully commingled recycling collection using wheelie bins.<sup>2</sup>

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<sup>2</sup> Despite the complainant's concerns regarding the European Waste Directive the Commissioner is satisfied that the information falling within the scope of set of requests F does not constitute 'environmental information' as defined by the Environmental Information Regulations (EIR). Therefore the Commissioner is satisfied that the Council was correct to

25. She explained that as result of these concerns, and following her own research into the subject, she contacted the Council – sets of requests A to D. She explained that she engaged in more than one round of correspondence as each of the Council’s responses raised more questions and anomalies and thus contacted the Council again to seek clarification of various points. She highlighted that in each piece of correspondence she explained the reason for her concerns and requests along with evidence to back them up. She argued that the Council’s responses to the requests set out in A to D simply referred her to documents without specific references and that she found this unsatisfactory. She therefore decided to submit formal FOI requests E (and subsequently F).
26. With regard to the particular criteria that the Council used to justify its application of section 14(1) the complainant argued as follows:
27. In terms of the burden answering the requests would have, she argued that the Council had brought this burden on itself because if they had provided her with the information when she had first asked for it, she would not have had to contact the Council again. She noted that the information she was seeking would have been used by the Council to reach a decision in respect of its recycling policy and this should be easy to find.
28. She did not accept the Council’s suggestion that her concerns stemmed from its recycling policy. Rather her concerns stemmed from her real concern regarding the potential conflict with the European Waste Directive and she was merely trying to ascertain the information which led the Council to arrive at this particular decision.
29. She did not accept that her correspondence had an argumentative tone. She suggested that each of her letters set out her concerns and the evidence for them. She had expressed herself politely in all correspondence and all requests for information and clarification have been politely phrased. She emphasised that she had not made any personal attacks or accusations against Council staff. She argued that she failed to see how expressing a different point of view, providing evidence for that view and asking for information relating to the Council’s decision can have an adverse effect upon staff.

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deal with these requests under FOIA, rather than under EIR which is the access regime which under which requests for environmental information should be considered.

30. She also disputed the Council's suggestion that she had re-requested information once it had been supplied to her. For example, it took three requests for figures for food recycling until they were supplied. Having received these figures she did not ask again. Where she had been referred simply to documents, especially those of tens of pages, she argued that it was reasonable, having read them carefully and not found the answer, to ask for a more specific reference, eg section/page/paragraph. Such information had not been forthcoming.
31. She argued that her problem was that the information sent either did not answer the specific questions or did not do so in sufficient detail.

### The Commissioner's position

32. In the Commissioner's opinion the application of section 14(1) by the Council to set of requests F is a finely balanced one. Indeed having considered the nature of the requests to which section 14(1) has been applied to, the Commissioner does not accept that there is a one size fits all answer. That is to say, he does not accept that all of the requests can be refused on the basis of section 14(1) albeit that some of them can.
33. Therefore for each of the individual requests, the Commissioner has explained below whether or not he considers section 14(1) to apply. However, before doing so he has made some general, overarching comments on the nature of each party's submissions.
34. In terms of the burden which requests F may place on the Council, the Commissioner accepts that these are the sixth set of multipart requests for information all on a same theme submitted by the complainant in a four month period. The Commissioner recognises that the answering the requests contained in this correspondence would inevitably have involved a not insignificant amount of Council time and resource. However, the Commissioner would note that the Council has not provided him with any specific indication as to the nature of this burden, eg an estimate of the hours spent dealing with these requests. (Indeed, it should be noted that the Council chose not to make any references to the Commissioner in support of its reliance on section 14(1) but instead simply relied on the content of its refusal notice and internal review.)
35. Furthermore, the Commissioner believes that it is important to recognise that sets of requests A to D were dealt with by the Council as a normal course of business requests rather as formal FOI requests. This is despite the fact that any written request for information technically constitutes an FOI request. Nevertheless, the Commissioner accepts that in many circumstances dealing with requests as part of normal course of business is a sensible one and will provide better customer service.

Instead the provisions of FOIA need to only come into force if the information cannot be provided straight away or the requester specifically states they wish to be provided with a response under FOIA.

36. In making this point, the Commissioner recognises that even though requests A to D were dealt with as normal course, they are still relevant to determining whether set of requests F can be considered vexatious. That is to say they form a key part of the background and context to requests F.
37. However, having reviewed sets of requests A to D the Commissioner accepts the complainant's line of argument that some of her initial queries do not appear to have been clearly or fully answered and thus it seems reasonable for her to continue to support further requests asking for information she had previously clearly asked to be provided. To some extent then, and for some of the questions, the Commissioner is minded to agree with the complainant that the burden, such that it is, in dealing with her requests is one that has been created by the Council.
38. The Commissioner does not consider the tone of the complainant's correspondence to be particularly argumentative in nature. Rather the correspondence is in his opinion politely and appropriately phrased. The Commissioner is therefore not particularly clear what the likely effect of the tone of this correspondence actually is on staff.
39. With regard to the allegation that the complainant has been unwilling to use or accept the information previously provided to her, for some of the requests the Commissioner would accept that this a reasonable conclusion for the Council to reach, but certainly not for all. Further, specific details in relation to this particular point are discussed, where necessary, on a request by request basis below. However, at this point the Commissioner believes that it is important recognise that if a public authority is responding to a request by referring a requestor to a specific website or document, the Commissioner would expect the public authority to provide a reasonably specific reference to that information rather than to leave a requester to have to search through significant amounts of material to find the information that they requested.
40. The Commissioner recognises that the complainant has, in submitting requests F, challenged *all* of the responses provided to requests E (apart from where data has been provided) and this could be seen as demonstrating an obsessive approach to this topic. However, in the Commissioner's opinion the complainant's overall approach in submitting set of requests F does not automatically provide sufficient justification to deem all of the questions which form part of set of requests F as vexatious. This is because in the Commissioner's view *some* of the responses to requests E were simply too general and it is reasonable for

the complainant to seek, via requests F, clarification as to the nature of recorded information held by the Council in respect of certain requests. In other words, simply because the Commissioner believes that some of the requests can be deemed as vexatious - not least because of the further demand placed on the Council's resources - he has reached this conclusion based on the particular circumstance of each request, and not simply on the set of requests as a whole.

41. In responding to a number of her questions submitted in set of requests E the Council explained that it did not consider them to be valid FOI requests, rather they were simply asking for an opinion on a particular point. In the Commissioner's view questions can be valid requests for information; under FOIA if a public authority holds recorded information that answers the question then it should be provided in response to the request. However, the Commissioner recognises that there are potentially limits to this and ultimately it is important to remember that a public authority does not have to create information to answer a request. Again, further specific details are discussed, where necessary on a request by request basis below.



## 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: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

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 .....**

**Alexander Ganotis**  
**Group Manager – Complaints Resolution**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**

	<b>Requests E</b>	<b>Response to requests E</b>	<b>Request F</b>	<b>Commissioner's view on the application of section 14(1) to requests F</b>
1	Why does the council not consider it unreasonable high to spend £1.64m to collect a mere 400 tons of glass at nearly £4,000 per ton?	The reasoning for our service changes is set out in the reports to Council of 17th July and 14th August 2012 and Weekly Collection Support Scheme bid documents published on our website details of which have been provided previously.	I did not ask for the "reasoning of our service charges", I asked very specifically: "Why does the council not consider it unreasonable high to spend £1.64m to collect a mere 400 tons of glass at nearly £4,000 per ton?" I apologise, that should read £1.67m. As you are aware, I had already read the two council reports and the bid documents to which you refer in your latest e-mail. In view of your latest e-mail I read them again very carefully. I am still unable to find any reference in any of them specifically to the fact that the only additional recycling that would be achieved through the new service is around 400 tons of glass. There is, therefore, no explanation of how spending 1.67m, or around	<p>The Commissioner accepts that section 14(1) applies to this request in the context of the previous responses. The request appears to be going over old ground and/or seeking simply to dispute the responses given to request E1.</p> <p><b>Section 14(1) - upheld.</b></p>

			<p>£4,175 per ton of glass, is considered to be value for money.</p> <p>If you are able to supply me with such an explanation or justification in simple terms for the expenditure of such a large sum on such a small quantity of glass, I would be grateful to receive it. Otherwise, I will have to assume you are unable to do so.</p>	
2	<p>Why does the council believe it is cost effective to encourage resources to be diverted away for already established and well used recycling sites?</p>	<p>The reasoning for our service changes is set out in the reports to Council of 17th July and 14th August 2012 and Weekly Collection Support Scheme bid documents published on our website details of which have been provided previously. This point has also been addressed in my previous replies.</p>	<p>I did not ask for "The reasoning of our service changes", I asked quite specifically: " Why does the council believe it is cost effective to encourage resources to be diverted away from already established and well used recycling sites?" Despite having re-read the documents to which you refer me, I can find no specific reference to the diversion of glass from existing recycling sites and therefore no explanation of why it is considered cost effective to make less use of provision which</p>	<p><b>Section 14(1) - upheld</b> for the same reasons as request 1.</p>

			<p>has been paid for and is well used by residents.</p> <p>If you are able to supply me with such an explanation in simple terms, or a specific reference in the documents, I would be grateful to receive it. Otherwise I will have to assume that you are unable to do so.</p> <p>I have, on second reading, noticed the paragraph at the bottom of page 12 which refers to recycling credits which MHDC receives "in respect of glass and other materials deposited at bring banks..." This paragraph goes on to say that "It is anticipated that the Councy [sic] Council will achieve savings in relation to recycling credits in respect of glass which will be collected through our proposed new kerbside collection service rather than bring banks." This suggests that MHDC will, therefore, lose these credits, so not only has an unnecessary kerbside collection of glass been</p>	
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			<p>introduced at great expense, not only does this mean that the existing bring banks that residents have already paid for through their council tax will be under utilised, but in addition MHDC will lose credits given to them by the County. This would appear to be a triple "lose" situation. If I have misunderstood, then please clarify.</p>	
3	<p>Why, when the Directive is quite clear that materials should be recycled separately, is the MHDC moving away from perfectly satisfactory separate recycling arrangements and facilities and encouraging people to commingle instead, bearing in</p>	<p>The reasoning for our service changes is set out in the reports to Council of 17th July and 14th August 2012 and Weekly Collection Support Scheme bid documents published on our website details of which have been provided previously. This issue has also been addressed in my previous replies.</p>	<p>The Council reports to which you refer me state quite clearly that there is a legal requirement to collect glass separately. You have previously stated quite clearly that there is no express reference to kerbside in the legislation. Therefore the cherry sack system, together with glass recycling bins at various locations around the district met the requirements of the legislation. The bid document, however, appears to have been compiled on the premise that kerbside collections are required in the legislation from 2015.</p>	<p>In the Commissioner's opinion this question does not actually contain a valid request, or even a question that could be interpreted as one. Rather it simply consists of complainant offering her opinion on a particular issue.</p>

	<p>mind that you accept that there is no legal obligation to collect glass from the kerbside?</p>		<p>There appears to be some conflict here. It would appear, therefore, that the move away from a system that is known to be TEEP to one which is going to cost local residents and taxpayers considerably more is based on a false premise. The decision to move from a system that is known to comply with the legislation to one that is open to challenge, is similarly based on a false premise.</p>	
<p>4</p>	<p>Please provide the exact reference within Mr Justice Hickinbottom's Judgement that states that it is perfectly acceptable to stop separate collections in favour of commingling.</p>	<p>Mr Justice Hickinbottom's judgement is published by central government and is available from the website. This should be read as a whole.</p>	<p>I had already read Mr Justice Hickinbottom's judgement in its entirety. In view of your latest e-mail I have read it again. Nowhere in his judgement does he state that it is permissible under the legislation to change from separate collections to commingled collections. In his conclusion he states:</p> <p>"66. For all of those reasons, with respect to the arguments of Mr Straker to the contrary, I find that the interpretation of the third paragraph of Article 11(1)</p>	<p>The Commissioner accepts that this request is vexatious. The points raised in request F4 simply attempt to cover ground already addressed by the response to E4. In the particular context of this request the Commissioner considers it appropriate for the Council to explain to the complainant that</p>

			<p>of the Waste Framework Directive is unambiguously clear: the obligation to set up separate collection of paper, metal, plastic and glass from 2015 is restricted by both the practicability and necessity requirements that also restrict the obligation in Article 10(2) to collect separately for the purposes of recovery. That is also generally concordant with the objectives and aims of the Directive, and general European law principles."</p> <p>The operative words here are "set up". If Malvern had to physically set up separate collections from scratch, i.e. move from existing commingled collections which included glass to separate collections, that may well be considered not to be TEEP, so continuing commingled collections would be permissible under the legislation. However, this is not the case, as has been established previously.</p>	<p>she needed to read the relevant judgement as whole rather than expect to be pointed towards specific sections within it.</p> <p><b>Section 14(1) - upheld.</b></p>
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			Again, if you are able to prove me wrong by quoting or sending me a specific reference to a part of the judgement that refers specifically to moving from separate collections to commingled ones, I would be pleased to receive it. Otherwise, I will have to assume that you are unable to do so and therefore have no justification for such a retrograde step.	
5	For MHDC to be sure that food recycling would be prohibitively expensive, calculations must have been made and figures and costings produced. Please provide the costings for such a collection.	DATA PROVIDED.	NO REQUEST	N/A
6	Did you liaise with Wychavon over the costing exercise for food	There has been no exchange of correspondence with Wychavon DC regarding the costs of food waste collections.	NO REQUEST	N/A



	collections? if not, why not?	We therefore do not hold any information relating to this part of your request.		
7	What exactly do you mean by this term, i.e. what, exactly are the "operational efficiencies" in real terms?	'Operational efficiencies' means the cost effective use of staff, plant, vehicles and other resources in providing services.	I understand the general meaning of the term "operational efficiencies." I would be grateful if you could supply me with specific details of what exactly those efficiencies will entail and how these will address projected future increases in running costs.	The Commissioner is persuaded that it is not unreasonable for the complainant to expect that the Council may hold specific recorded information about the 'operational efficiencies' than that provided in the response of E7.  In the Commissioner's view, this request is not vexatious.  <b>Section 14(1) – not upheld.</b>
8	What will the chips be used for and why are they considered essential?	This is explained on the 'Recycling bins' page of our website.	NO REQUEST	N/A

9	<p>Why are the weighing software and weighing equipment in the lorries required for recycling through wheelie bins?</p>	<p>This is explained in our Weekly Collection Support Scheme bid documents published on our website details of which have been provided previously.</p>	<p>I am unable to find any specific reference to the use to which the weighing equipment in lorries will be put. While the explanation for the microchips mentions weighing it is still not clear exactly why this is necessary and how it will be used. Again, I would be grateful for a simple explanation, or a very specific reference/link to where I might find such an explanation. Please remember I do not have any in-depth knowledge or experience of refuse collections, hence my request for a simple explanation.</p>	<p>In the Commissioner's view it is not unreasonable for the complainant to expect to be provided with a more specific reference to the document cited in order to find the material sought by request 9E. In the alternative, nor is it unreasonable for her to be provided with any other recorded information that would answer request 9F.</p> <p><b>Section 14(1) – not upheld.</b></p>
10	<p>In view of the piece in the paper and residents' concerns, please confirm categorically that the council will not be introducing</p>	<p>The council has no such plans. We therefore do not hold any information relating to this part of your request.</p>	<p>I note that you state the council has no plans to introduce a system of fines in connection with wheelie bins, but you do not state how far into the future those plans extend. I note also that you have not given an assurance that that will not be</p>	<p>In the Commissioner's view this request is vexatious. The complainant is simply seeking to challenge what is, in his opinion, a reasonable</p>

	<p>any system of fines in connection with any wheelie bins either now or in the future.</p>		<p>considered in the future.</p>	<p>and fair response to request 10E.  <b>Section 14(1) – upheld.</b></p>
<p>11</p>	<p>Please provide the detailed figures, showing all the costs for the monthly glass box collection option, in a similar way to the Key Assumptions document.</p>	<p>Costs for glass box collections are set out in annex 5 to our Weekly Collection Support Scheme bid documents published on our website details of which have been provided previously. We do not hold and are not obliged to create new data in order to respond to this part of your request.</p>	<p>I find it strange that the council reports and the bid documentation state that the cost of a system involving boxes for the collection of glass is more expensive than a system involving wheelie bins, yet you state in your e-mail that you do not hold the data showing the costs for the glass system in the same amount of detail and the same format as the Key Assumptions document. I also find it curious that you have retained the detailed cost for food collections but not for a system of glass collection using boxes. I would be interested in an explanation for these anomalies...I fail to understand how a box system would be more expensive to set up and run than the wheelie bin system. Any clarification you are able to</p>	<p>This request is vexatious; the Council has provided a response to request 11E which is sufficiently specific in terms of locating the requested information and also clarifies its position as what information is held. In the Commissioner’s opinion request 11F simply seeks to challenge this reasonable response or go over old ground, or simply attempts to invite the Council to create new information or offer opinions, neither of which the Council are</p>

			give me would be gratefully received.	required to do under FOIA.  <b>Section 14(1) – upheld.</b>
12	Please provide the detailed figures, showing all the costs for the monthly glass box collection option, in a similar way to the Key Assumptions document.	Annexes 4 and 5 are supporting documents to our Weekly Collection Support Scheme bid which is published on our website details of which have been provided previously.	My question was: " Please explain how the figures in annex 5 relate to the figures in annex 4." Your response does not address this, so I will clarify my request. Annex 5 states the annual revenue cost of the WCSS bid is £1,789,000, while annex 4 shows the costs by year 5 to be £1,908,088. I would be grateful if you could explain, again in simple terms, why these two figures, which appear to be for the same thing, are different.	Again, the Commissioner would accept that this is simply seeking to go over old ground and challenge information already provided.  <b>Section 14(1) – upheld.</b>
13	Please provide me with the figures for all the options which were or may be potentially sustainable.	This information is set out in our Weekly Collection Support Scheme bid documents published on our website details of which have been provided previously.	I will assume from the your response that the only options that were considered were various alternatives involving boxes and wheelie bins for commingled collections including glass and one option for food collections. Please advise if I am wrong in this assumption.	The Commissioner is not convinced that this is a valid request for information; in any event the request for clarification is simply an attempt to go other old ground / seek clarification on a clear response that has already been

				provided. <b>Section 14(1) – upheld.</b>
14	Please explain how you ascertained which options were or may have been potentially sustainable.	The reasoning for our service changes is set out in the reports to Council of 17th July and 14th August 2012 and Weekly Collection Support Scheme bid documents published on our website details of which have been provided previously.	In answer to my question regarding how you ascertained which options were or may have been potentially sustainable, once again you refer me to documents which you are aware I had already read and which do not appear to contain the answers to my question. I was looking for specific references or links and am sorry you have not been able to provide me with these. I must, therefore, assume you are unable to do so.	<b>Section 14(1) – upheld</b> for the same reasons as discussed in relation to request 13.
15	Was not the legislation coming from Brussels considered a major constraint? If so, why was a review of the Strategy not undertaken in 2008/9 to incorporate separate stream	We do not hold any information relating to this part of your request. This is asking for an opinion and is not a request for information within the meaning of the Freedom of Information Act.	My question was: "Was not the legislation coming from Brussels considered a major constraint? If so, why was a review of the Strategy not undertaken in 2008/9 to incorporate separate stream recycling as required by the Directive? If not, why was such a major piece of legislation ignored?"	In the Commissioner's view the application of section 14(1) to this request is particularly finely balanced.  As noted above, in the Commissioner's view questions can be valid requests for

	<p>recycling as required by the Directive? If not, why was such a major piece of legislation ignored?</p>		<p>This is not a matter of anyone's opinion, it is asking for information relating to the review of the Strategy and as such it should be a matter of record. I am assuming that minutes are kept of meetings at which the decision is taken when to review the Strategy and of meetings at which those reviews take place. There should, therefore be a record of whether the Directive was discussed and if so how it was discussed. If it was not discussed, there should be a record of the meeting at which a decision was made that it was not necessary to review the Strategy in the light of the Directive.</p> <p>I would therefore be grateful if you could forward to me a link to the necessary documents, showing when and how the Directive was discussed. Otherwise I will have to assume you are unable to do so.</p>	<p>information.</p> <p>Therefore, in the Commissioner's opinion the Council could not simply reject request 15E on the basis that it was seeking an 'opinion' rather than specified recorded information. The Commissioner does acknowledge that in responding to request 15E the Council indicated that despite its view on the validity of the request, no information was in fact held.</p> <p>However, despite this response, and primarily in the light of the Council's incorrect view that request 15E was invalid, the Commissioner is</p>
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				<p>persuaded that it is not unreasonable for the complainant to have submitted request 15F and in doing so provided some suggestions as to the type of specific recorded information she was seeking. It may well be the case that the Council does not hold any recorded information of the nature suggested by the complainant in request F15, but the Council should have confirmed to the complainant that this is in fact the case.</p> <p>Therefore the Commissioner does not accept that this request is vexatious.</p> <p><b>Section 14(1) – not upheld.</b></p>
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16	Why was the survey not undertaken earlier, prior to the policy being formulated?	We do not hold any information relating to this part of your request. This is asking for an opinion and is not a request for information within the meaning of the Freedom of Information Act.	My question was why was the survey not undertaken earlier, prior to the policy being formulated. This should not be a matter merely of someone's opinion, it should be a matter of record. It should have been a policy decision as to if and when such a survey should be carried out and, assuming that this issue was discussed with councillors, there should be a record of that decision. That record should give reasons. Please advise where this information is recorded.	Not vexatious for the same reasoning set out in relation to request 15.  <b>Section 14(1) – not upheld.</b>
17	Why did this survey cover a much smaller geographical area than previous surveys and in particular why were few, if any notoriously steep and difficult areas,	The scope of the survey is explained in the survey report which is published on our website.	I did not ask what the scope of the survey was, I asked why it covered a much smaller geographical area than other surveys and in particular why there were few, if any, notoriously steep and difficult areas, such as Wyche and West Malvern. I am unable to find the answer to these questions in the	Not vexatious for the similar reasoning set out in relation to request 15.  <b>Section 14(1) – not upheld.</b>



	<p>such as the Wyche and West Malvern, included?</p>		<p>survey report. When a survey is commissioned it is usual to set criteria for those conducting the survey. Such criteria are vital if the ensuing report is to be considered viable. Again, this should have been a policy decision and should be recorded somewhere. Please advise where this information is recorded, so that I can find the answers to these questions.</p>	
<p>18</p>	<p>Given that residents in authorities which have food recycling collections are more than happy to have their waste collected fortnightly, as it is not smelly and therefore does not attract vermin, and that this survey was done to inform policy, why was food recycling not included in the</p>	<p>We do not hold any information relating to this part of your request. This is asking for an opinion and is not a request for information within the meaning of the Freedom of Information Act.</p>	<p>My question here related to why the option of food recycling collections was not included in the residents' survey. Again, this should have been a policy decision and should, therefore, be recorded. Please advise where this information is recorded.</p> <p>I am assuming in these two questions that councillors were involved in these decisions and that the decisions were not taken unilaterally by officers. Please advise if I am wrong in this assumption.</p>	<p>As with request 15, and for the same reasons, the Commissioner is not persuaded that this request is vexatious.</p> <p><b>Section 14(1) – not upheld.</b></p>

	survey? Had the policy decision already been made not to consider food recycling collections before the survey was undertaken?			
19	Why are wheelie bins the only method shown for recycling?	We do not hold any information relating to this part of your request. This is asking for an opinion and is not a request for information within the meaning of the Freedom of Information Act.	With regard to why wheelie bins are the only method of recycling shown in the Waste Management Strategy, again, I would have expected that this document had to meet with the approval of all the authorities involved. If so, then there would be a record of these meetings, which would show how and why such decisions were taken and what views were put forward by the representatives of the authority. Please advise where I can find the record of these meetings.	As with request 15, and for the same reasons, the Commissioner is not persuaded that this request is vexatious.  <b>Section 14(1) – not upheld.</b>
20	Please provide me with references to the exact section, subsection, sentence etc. in the strategy that refers directly to	The information your [sic] are seeking is contained in the headline strategy and supporting technical annex published on the County council web site and should be read in their entirety.	I asked you to provide me with the exact section, subsection, sentence etc. in the Strategy that refers to the Directive. I have read the Strategy and can find no reference to the Directive. You have referred me	The Commissioner accepts that this request is vexatious. The points raised in request F20 simply attempt to cover ground already

	<p>the strategy and its emphasis on quality and separate stream recycling</p>		<p>to the "Headline Strategy and supporting Technical Annex." I have searched the County council website, but can find only the Strategy document. You also state that it should be read in full, which is strange as the Directive is most certainly not mentioned in every sentence or paragraph. Mine is not an unreasonable request, but you have failed to supply me with the requested information. Unless this information is forthcoming, I shall have to assume that you are unable to provide it.</p>	<p>covered by the response to E20. In the context of this request the Commissioner considers it appropriate for the Council to explain to the complainant that the material previously referred to needs to read as whole.</p> <p><b>Section 14(1) - upheld.</b></p>
<p>21</p>	<p>Please provide me with the full breakdown of food recycling costs. Again I would appreciate this in the same amount of detail as the key assumption document in annex 4 of the bid.</p>	<p>See 5 above.</p>	<p>NO REQUEST.</p>	<p>N/A</p>

<p>22</p>	<p>Do you acknowledge that the emphasis of the Directive was on ensuring high quality recyclates? If so, why is this change of emphasis not reflected in the wording and recommendations of the Strategy?</p>	<p>We do not hold any information relating to this part of your request. This is asking for an opinion and is not a request for information within the meaning of the Freedom of Information Act.</p>	<p>I asked why the change of emphasis of the Directive from quantity to ensuring high quality recyclates was not reflected in the wording and recommendations of the Strategy. You state that I am asking for an opinion, which suggests that this Strategy was written on the whim of one person. As stated above, I would have expected that this document was subjected to careful scrutiny and was discussed by all the authorities involved. There should, therefore, be a record of these meetings, the decisions taken and the reasons behind those decisions. Please advise where I might find such records.</p>	<p>In the Commissioner's view the application of section 14(1) to this request is finely balanced. Although as previously discussed the Commissioner accepts that questions can be valid FOI requests, he believes that the first sentence of E22 does appear to genuinely seek an opinion as to how the Directive could (or should) be interpreted. The second sentence of the request depends on that opinion being provided. The Commissioner is not persuaded that this is valid request for information and moreover for the complainant to continue to seek</p>
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				<p>clarification on this particular aspect, in light of previous responses, and the particular nature of request E22 makes request F22 vexatious.</p> <p><b>Section 14(1) – upheld.</b></p>
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