

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

Decision notice

Date: 19 March 2015

Public Authority: Wiltshire Council

Address: County Hall
Bythesea Road
Trowbridge
Wiltshire
BA14 8JN

Decision (including any steps ordered)

1. The complainant has requested correspondence between the Council and a number of named parties relating to a particular planning application. The Council applied regulation 12(5)(e) – commercial confidentiality, to a financial report. At the internal review stage the Council realised that it held additional information falling within the scope of the request. However it went on to apply regulation 12(4)(b) – manifestly unreasonable, to this information on the basis that locating and retrieving the additional information would place an unreasonable burden on the Council. During the Commissioner’s investigation the Council extended its application of regulation 12(4)(b) to the entire request arguing that it was manifestly unreasonable on the basis of both the time it would take to find the information and on the basis that the request was vexatious.
2. The Commissioner’s decision is that the Council has failed to demonstrate that regulation 12(5)(e) is engaged. Nor is the Commissioner satisfied that the request can be refused under regulation 12(4)(b) on the grounds that it is vexatious. However the Commissioner is satisfied that the burden of complying with the request in terms of the time involved does render it manifestly unreasonable. The Commissioner also finds that the Council failed to provide adequate advice and assistance under regulation 9 and that it failed to respond to the request within the 20 working days and so breached regulation 14(2).

3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - To provide advice and assistance under regulation 9, aimed at helping the complainant make a refined request.
4. 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.

Background

5. The planning application referred to in the request relates to what was originally holiday accommodation attached to a golf course and leisure facility on the outskirts of a small village. The planning application seeks to vary the conditions attached to a number of the holiday units which would in effect mean they could be marketed as residential accommodation. Information was provided in support of the application which argued that the sale of the units as holiday homes was not economically viable. The Council commissioned its own report assessing the viability of the units as holiday accommodation.

Request and response

6. On 25 April 2014, the complainant wrote to the Council and requested information in the following terms:

“All correspondence between the North Planning Team and Chesterton Humberts, Strutt & Parker and LPC Trull relating to planning application 13/00958/”
7. The Council responded on 29 May 2014. It said that it had previously published a report on the planning application from which information had been redacted. It refused to provide the redacted information relying on the exceptions provided by regulation 12(5)(e) – commercial confidentiality and regulation 13 – personal information.
8. Following an internal review the Council wrote to the complainant on 24 July 2014. It stated that an updated version of the report had now been published and provided the complainant with a copy. However it continued to withhold some information under regulation 12(5)(e). The Council also explained that it had identified other information which fell

within the scope of his request and needed additional time to consider whether this information could be disclosed.

9. On the 15 August 2014 the Council wrote to the complainant again and advised him that it was withholding the additional information under regulation 12(4)(b) on the basis that it would be very time consuming to comply with his request.

Scope of the case

10. The complainant originally contacted the Commissioner on 29 May 2014, ie the day on which his complaint had been initially refused. He was concerned that his request had been refused and that the council had taken too long to respond. At that time he had not exhausted the Council's internal review procedures and so the Commissioner declined to consider his complaint.
11. The complainant contacted the Commissioner again on the 31 July 2014. As this was following the completion of the Council's first internal review the Commissioner accepted the complaint.
12. During the course of the Commissioner's investigation the Council applied regulation 12(4)(b) manifestly unreasonable to the entire request. It also extended its grounds for relying on the exception to include arguments that the request was vexatious. As the Council had not informed the complainant of this development the Commissioner contacted the complainant and advised him of the fact.
13. The Commissioner asked the Council to clarify whether it still wished to rely on regulation 12(5)(e) in respect of the financial report and the Council responded that it did. However it did not provide any submissions in support of this exception.
14. The Commissioner considers that the matters to be determined are whether the Council is entitled to refuse the request in its entirety under regulation 12(4)(b) – manifestly unreasonable on the grounds of burden and that it is vexatious. He will also consider whether the financial report can be withheld under regulation 12(5)(e) – commercial confidentiality, and whether the Council's initial response to request was late in breach of regulation 14(2).

Reasons for decision

Regulation 14(2) - Time of response

15. Where a public authority refuses a request it is required to do so in writing. Regulation 14(2) of the EIR requires that a public authority provides that written refusal as soon as possible and no later than 20 working days following the receipt of the request.
16. The request was made electronically on Friday 25 April 2014. Therefore the request would have been received the same day. This would be the case even if it was not actually sent until after close on business on the Friday. Therefore the 20 working days would start from Monday the 28 April. This makes the twentieth working day Tuesday 27 May 2014, allowing for the two bank holidays in May.
17. The Council did not provide its response until the 29 May 2014. This constitutes a breach of regulation 14(2). Although the Council was only two days outside the time limit for responding it should be noted that the 20 working days is the maximum period allowed, the actual obligation is to respond "as soon as possible".
18. The Commissioner monitors late compliance with the requirements of both the FOIA and the EIR. If a pattern of late compliance emerges the Commissioner will consider whether regulatory action is appropriate.

Regulation 12(5)(e) – commercial confidentiality

19. Regulation 12(5)(e) of the EIR states that a public authority can refuse to disclose information if doing so would adversely affect the confidentiality of commercial information, if that confidentiality is provided by law to protect a legitimate economic interest. It sets up a number of tests which have to be met before the exception can be relied on.
20. Firstly the information has to be of a commercial nature. Secondly the information has to be subject to a legally binding duty of confidence. That confidentiality has to protect a legitimate economic interest and finally that confidentiality has to be adversely affected by disclosing the information.
21. Where it is the economic interests of a third party which are at stake, the Commissioner requires the public authority to provide evidence that the arguments presented reflect the genuine concerns of that third party.

22. As part of the planning process the Council had to consider the economic viability of the holiday homes. It had been provided with financial information in support of the application. It then commissioned a consultant to assess the validity of that information. The report produced by the consultant contained the financial information submitted in support of the application. Prior to the complainant's request the Council had published a redacted version of the consultant's report on its website. When initially responding to the complainant's request on 29 May 2014 the Council explained that the financial information contained in the consultant's report had been provided in confidence and was commercially sensitive as it included details of turnover and business accounts. The Council therefore withheld this information under regulation 12(5)(e).
23. On the 24 July 2014, at the internal review stage, the Council reconsidered its application of regulation 12(5)(e). By this time an updated version of the consultant's report had been published which now included much of the information originally withheld. However the Council continued to withhold a financial report relating to Oaksey Park, simply explaining that it contained commercially sensitive information. The Council has provided the Commissioner with a copy of that report. The Council has also explained that although it was provided as part of the submission in support of the planning application, the financial information had no bearing on the issues under consideration and had no influence on the outcome of planning application. The Council has argued that because it is irrelevant, the public interest favoured withholding the information.
24. The Commissioner is satisfied that the report was supplied by a third party. Furthermore as the Council itself has identified the report as being caught by the request he accepts that it was provided by one of the named third parties. Having seen the information he is also satisfied that it relates to a commercial business and therefore constitutes commercial information.
25. Although it may well be that the provider of such information would have submitted it in the expectation that the Council would treat it as being confidential, the Council has not provided any detailed arguments to that effect. More importantly the Council has not explained how disclosing this information would harm the economic interests of the third party. Nor has it provided any evidence that its application of the exception was based on concerns expressed by that party.
26. In light of this the Commissioner is unable to find that the exception is engaged. However as the Council has subsequently applied regulation 12(4)(b) to the entire request, including this financial information, the Commissioner must consider the application of that exception before

deciding whether the financial information should be disclosed. The Commissioner recognises that if Council was confident in its reliance on regulation 12(4)(b) it may have felt it was unnecessary to fully develop its arguments in respect of regulation 12(5)(e).

Regulation 12(4)(b) – manifestly unreasonable

27. Regulation 12(4)(b) states that a public authority may refuse to disclose information to the extent that the request is manifestly unreasonable. Requests can be deemed manifestly unreasonable on two grounds. Firstly a request can be manifestly unreasonable because it is vexatious. Secondly it can be manifestly unreasonable because complying with the request would be very costly, or would involve a diversion of resources, including officer time.
28. Originally the Council only applied this exception to the additional information it discovered when carrying out its internal review on 24 July 2014. It informed the complainant that it held this information and explained that it was still in the process of considering whether the information could be released. On the 15 August 2014 the Council informed the complainant that it was withholding this information under regulation 12(4)(b) because it would be very time consuming to locate and retrieve all the information. During the Commissioner's investigation the Council extended the application of regulation 12(4)(b) to include the financial information discussed above. It also argued that the exception was being relied on not just because the request would be very time consuming to comply with, but because the request was vexatious. The Commissioner will first consider whether the request can be deemed vexatious.

Vexatious

29. The Council first claimed the request was vexatious when responding to the Commissioner's enquiries in September 2014. Although it stated that its principal reason for applying regulation 12(4)(b) was because of the time it would take to comply with the request and the resultant distraction of resources, it also argued that when seen in the context of the complainant's other dealings with the Council the request was vexatious.
30. In line with Tribunal decisions in respect of requests made under FOIA, the Commissioner considers 'vexatious' to mean the "manifestly

unjustified, inappropriate or improper use of a formal procedure'¹ The Tribunal's decision established the concepts of 'proportionality' and 'justification'. In other words the value or serious purpose of the request has to justify the detrimental impact caused by complying with it. If the detriment is not justified, there are grounds for considering the request is vexatious.

31. It is apparent that the planning application aroused strong opposition from the local community and the Council has described the complainant as being part of a team of objectors. The Parish Council also objected to the application. The complainant has submitted what the Council describe as extensive correspondence on the issue. The leading planning officer for the planning application is said to have received 141 emails over a seven month period. The correspondence included submissions of information for consideration by the Council when determining the application. They also include queries and information requests; the Council has identified 4 other information requests made by the complainant that are connected to the planning application. The Council has also referred to a further two information requests made on behalf of the Parish Council but accepts there is no indication that the complainant and the parish council are acting in concert.
32. In addition the complainant has corresponded with other relevant parties, for example the consultant commissioned by the council to assess the economic viability of the original holiday home scheme. The Council has taken account of the time and resources expended on dealing with the issues raised by the complainant and others when determining that the request is vexatious. The Council has also referred to the fact that the complainant has contacted his local ward member about this planning matter.
33. The complainant has made last minute submissions of additional information immediately prior to Committee meetings. This has led to the application being deferred on at least two occasions. The Council argues that the complainant's requests and challenges appear to be engineered to frustrate the planning process
34. The Council has assumed that the complainant's main concern is the Council's assessment of the economic viability of the units as holiday homes. It has argued that the requested correspondence would provide little information on that issue and therefore has no serious value.
35. Finally, it is understood that the complainant has challenged the capability and integrity of the planning officers involved. He has made

¹ Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (ACC) (28 January 2013)

formal complaints about the processes that were followed including the engagement of consultants and the Council's attempt to prevent the complainant contacting the consultant directly. The Council accepted it had failed to follow the proper procurement procedure but it did not uphold other aspects of the complaint. The complainant pursued these other matters through the Local Government Ombudsman. It is understood that the Ombudsman has issued a provisional view which supports the Council. However it is unclear when these allegations and complaints were made. The Council's submission also refers to several formal and informal complaints being made between April and June 2014, seeking the removal of the planning officer who was the case officer for the application.

36. In summary the Council has argued that the request has to be seen within the context of the wider interaction the complainant has had with the Council over this matter. It has claimed that dealing with all the complainant's requests and queries have been a burden and involved disproportionate effort. It has also argued that the complainant has directed complaints against individual officers and the Council argues that the request has to be seen as part of his pursuit of personal grudges and unfounded allegations.
37. The points raised by the Council are all relevant to the consideration of whether a request is vexatious. It is clear that the complainant has been in extensive correspondence with the council over the planning issue which is at the heart of the request. It is also clear that other members of the local community share the complainant's concerns over the relaxation of the planning conditions on the holiday homes, this includes the parish council. This supports an argument that there is a genuine and serious purpose to the request, ie the gathering of information to inform the public about a matter over which there is real concern.
38. The Council has argued that the requested correspondence will provide little information on its assessment of the economic viability of the units as holiday homes. Although the Council has assumed this to be the complainant's primary concern this is not necessarily the case. Due to the scope of the request it is likely to capture information on many aspects of the planning application and the submissions that were made in respect of it. Providing such information would provide local residents with information about the reasons for the Council's decision in respect of that application.
39. However the value of providing such information has to be considered in light of other information that has been disclosed about this application. The Commissioner is aware that the Council has published the consultant's report on the economic assessment of the properties as holiday homes. He has also found a report to the relevant planning

committee on the application which is dated two days before the complainant made his EIR request. The report recommended the Council accept the proposed removal of the planning conditions. However, although the Commissioner recognises that there is likely to be a significant amount of information already published by the Council, this does not mean the request is without serious purpose. Furthermore it is apparent that the complainant is interested in the processes that were followed in the assessment of the submissions. The Commissioner is not aware of any flaws the process apart from a fairly minor breach in the Council's procurement procedures when engaging a consultant, but scrutiny of the process is still a valid reason for requesting information.

40. The Council has argued that rather than seeking information the request is part of a campaign by the complainant to frustrate the determination of the planning application. The Commissioner has some sympathy with the Council and appreciates that on occasions this may have been the result of the complainant's interactions with the Council. However, based on its submission, he is not satisfied that the Council has proved this point. For example the Council has explained that last minute submissions made by the complainant have caused planning decisions to be deferred. However it is not clear why the Council accepted such submissions if they were not eligible. The Council has suggested that the complainant is part of a team of objectors but it has not provided evidence in support of its position; it has referred to other requests made by the parish council but went on to explicitly state that there was nothing to suggest the complainant was acting in concert with that body. The Council has not satisfied the Commissioner that the actions of other objectors should be taken into account when assessing the impact of the complainant's interactions with it. The Council has also referred to the numerous avenues through which the complainant has raised queries. This includes matters raised via his local ward member. However such an approach seems reasonable, lobbying a local councillor seems a legitimate participation in the democratic process.
41. The Council has provided the Commissioner with copies of four other information requests made by the complainant. Two of those requests appear to seek the consultant's report on the assessment of the economic viability of the properties as holiday homes. The consideration of this report appears to have been central to the planning decisions and ultimately the Council did provide an un-redacted version of the report. Therefore it appears to the Commissioner that there was a value to those requests. A third request is prefaced by the statement that the Council had agreed to answer the questions raised if they were put into writing and relate to the Council's enforcement of the original planning conditions on the use of the holiday homes.

42. One of the grounds raised by the Council in favour of the request being vexatious concerns the targeting of a particular planning officer. Where a request can be shown to be pursuing a personal grudge against a member of staff or where a member of staff is subjected to unfounded allegations the Commissioner considers this is a significant factor in determining a request is vexatious. However, based on its submission, the Commissioner is not satisfied the Council has proved its argument.
43. The Council has identified certain factors that indicate the request is vexatious however the Commissioner is not satisfied that it has substantiated its arguments. As discussed at paragraph 35, the Council's submission refers to several formal and informal complaints being made between April and June 2014, seeking the removal of a particular planning officer from the case. However it has not provided any further information about these complaints which would allow him to reach a view on the nature of the complaints and whether they are indicative of the request being vexatious. Furthermore in assessing whether a complaint is vexatious a public authority can only take account of events up to the time by which it should have responded to the request. In this case the complainant made his request on the 25 April 2014. The Council therefore had until 27 May 2014 to respond and should only have had regard for the complainant's behaviour up to that point. It is not clear whether the Council can legitimately take account of all these complaints.
44. On balance therefore the Commissioner finds that the request did have a serious purpose. He accepts that responding to the complainant would have had resource implications for the Council and that the request has to be seen in light of those other queries, complaints and requests. However there are weaknesses in the Council's arguments which undermine its position. The Commissioner is not satisfied that the complainant is acting in concert with others, nor has the Council demonstrated that the complainant's purpose was to frustrate the planning process rather than to gather information to inform his objection to the planning application. Nor has the council provided sufficient detail to satisfy the Commissioner that the complainant is targeting a particular planning officer in pursuit of a personal grudge. The Commissioner is therefore not satisfied that the Council has shown the request is vexatious.

Cost and diversion of resources

45. When considering whether the time it would take to comply with a request would render it manifestly unreasonable the Commissioner has regard for the approach set out in FOIA. Section 12 of FOIA provides that a public authority is not obliged to comply with a request it would exceed a cost limit known as the 'appropriate limit'. The appropriate

limit itself is set out under the Fees Regulations² and for public authorities such as the Council is £450. If the cost of complying with a request relates to staff time the Fees Regulations allow the public authority to calculate that cost at £25 per hour, per member of staff. This equates to 18 hours of staff time (£25 x 18 = £450). The Fees Regulations also limit what tasks a public authority can take account of estimating whether the appropriate limit would be exceeded.

46. The Commissioner fully recognises that the EIR do not contain an appropriate limit. Nevertheless he considers the Fees Regulations to be a useful starting point as they give a clear indication of what Parliament considered to be a reasonable charge for staff time.
47. However the application of regulation 12(4)(b) does not rely solely on the cost in terms of staff time though. It is also necessary to consider such factors as:
 - the nature of the request and any wider value in the requested information being made publicly available;
 - the importance of any underlying issue to which the request relates, and the extent to which responding to the request would illuminate that issue;
 - the size of the public authority and the resources available to it, including the extent to which the public authority would be distracted from delivering other services; and
 - the context in which the request is made, which may include the burden of responding to other requests on the same subject from the same requester.
48. The Commissioner will first consider the Council's submissions regarding the amount of time that it would take to respond to the request. Once that has been established he will apply the factors listed above to determine whether the cost in terms of staff time means it would be manifestly unreasonable for Council to respond to the request.
49. It is understood that the Council is experiencing a period of change. It was formed from 5 predecessor councils and this required the merger of four planning departments. The Council is also in the process of, what it calls, a 'transformation programme' and an assessment of working practices aimed at streamlining services. These changes were being implemented at the time of the request and are still ongoing. The changes include the introduction of a new IT system, the transfer of

² Statutory Instrument 2004 No 3244 The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

data on to the new system and the electronic recording of older hard copy files. The data transfer is ongoing and officers are still adapting to the new systems. At the time of the request officers had not yet adopted one consistent approach to recording information. This remains the position. Therefore the new IT system does not currently provide a fully accurate record of all planning files and there is not one central file containing all the information, including all correspondence, on the planning application which is the subject of the request.

50. The Council has also explained that as the planning application seeks to vary the conditions attached to previous planning consents, the relevant application history covers an extended period going back several years and involves several officers within the Council. This includes correspondence with a private planning consultant who is one of the parties named in the request. The position is further complicated by the fact that some of the third parties named in the request are involved in multiple planning applications and therefore one piece of correspondence may deal with several separate planning issues and may have been sent to more than one planning officer.

51. The consequences of these working practices are:

- Three officers are involved in the planning application and all hold relevant correspondence on their personal work drives which only they can access,
- Information may also be held on the new IT system,
- Historic information relevant to the planning application will be held as hard copies in two physical locations,
- The historic information may also be held electronically on the new IT system, or on a shared electronic drive, known as 'P drive', which predates the new system,
- Information concerning these applications may also be held in management files as a consequence of complaints being made in respect of the Council's handling of the application and against a particular planning officer.

52. The Council argues that it would be manifestly unreasonable to expect the Council to search all the files which could hold relevant information in order to respond to the request.

53. The Council has provided the following estimate of the time it would take to locate all the information falling within the scope of the request:

- It has identified the number of the emails held by each of the three officers involved in the planning application as well as those held in other locations which are clearly identifiable as relating to the planning application. There are 600. It estimates that it would take 5 minutes to review each of these emails, $600 \times 5 = 3,000$ minutes = 50 hours.
 - It has identified 1224 planning applications which one of the parties was involved in. All of these would need to be checked to determine whether they were likely to contain relevant information (this is because of the tendency for that party to address several issues in the same email). The Council estimates that to review a list of these files to identify those most likely to contain relevant information would take 7.5 hours.
 - Ordering and collection of these files from archives and sourcing electronic records would take 7.5 hours
 - Assuming that it identified 20 files which potentially contained relevant correspondence, the Council estimates that it would take 30 minutes to review each file and locate any relevant emails, $20 \times 30 = 600$ minutes = 10 hours.
 - In total $50 + 7.5 + 7.5 + 10 = 75$ hours
54. The Council has not said whether this estimate is based on a sampling exercise and therefore the Commissioner assumes it is not. In light of this the Commissioner is sceptical in respect of two of the estimates provided. It is not clear what tasks the Council has taken into account when estimating it would take 5 minutes to review each of the 600 emails identified in the first bullet point as being relevant to the application. However even if this was drastically reduced to an average of 2 minutes to locate and extract each email and then collate all those emails, this would still represent 20 hours of staff time. The Commissioner is also unclear what is involved in ordering and collecting archived hard files which would take 7.5 hours as set out in the third bullet point. However even if this was reduced to 3 hours, a revised estimate of the time taken to identify, locate, retrieve and collate all relevant correspondence would be, $20 + 7.5 + 3 + 10 = 40.5$ hours.
55. Under the EIR the Council may also take account of the time spent considering any exceptions in relation to the information it has located and formulating its response. The Commissioner is aware that this estimate above does not take account of these tasks and that therefore the cost of complying with the request would be greater than the Commissioner's conservative estimate of just over 40 hours.

56. The Commissioner is satisfied that complying with the request would involve a significant amount of staff time. However for the request to be manifestly unreasonable this expenditure of staff time has to be considered in light of the factors set out at paragraph 48 above.
57. The Commissioner is satisfied that the planning application to which the request relates is an important issue locally and has aroused public concern. However as the requested information has not been collated and therefore its content is still largely unknown, it is not possible to assess accurately how the information would serve to illuminate that issue. Nevertheless given the scope of the request the Commissioner is satisfied that it is likely to capture information on many aspects of the decision making process.
58. The Council is a unitary authority and serves a population of around 435,000. Therefore the Commissioner anticipates that the Council will be well resourced and the expenditure of 40 hours of staff time has to be seen in that context. However the Commissioner has had regard for the fact that the necessary searches would have to involve just three planning officers. This is not only because personal drives would have to be searched but because it would require someone who was familiar with the specific planning application and the team's working practices to carry out the other searches of shared drives and archives. This would be particularly onerous on the lead planning officer for that application who is likely to shoulder the majority of the work. The Commissioner considers that dedicating this amount of time to dealing with one information request would seriously disrupt the ability of those officers to carry out their day to day duties and this would have a detrimental effect on the Council's planning function. Therefore the Commissioner finds that the request would be disproportionately burdensome on the Council and that therefore it is manifestly unreasonable. The exception provided by regulation 12(4)(b) is engaged. However the exception is subject to the public interest test.

Public interest

59. Regulation 12(1) provides that information can only be withheld under an exception if, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information. Some of the issues relevant to the public interest test have already been touched upon.
60. The Council has argued that the disruption to its planning function would be significant and effect members of the public and the local environment of Wiltshire. Time taken processing the request would

reduce the officer time available to determine planning applications which in turn has an impact on residents, communities, local businesses and developers.

61. The problems caused by such disruption are exacerbated by the fact that many of its obligations under the planning system are subject to deadlines and commitments that cannot be altered, for example appeals, public inquiries, producing committee reports. The Commissioner accepts these arguments.
62. The Council has also argued that the requested correspondence would add little to the complainant's understanding of its decision on the planning application. The Council has assumed that the complainant is seeking information on the Council's assessment of the information on the economic viability of the holiday homes. It has pointed out that the assessment it commissioned on the viability of the scheme had been published by the time of the first internal review. The Council also maintains that the normal planning process is an open and transparent one and that a lot of information has already been published.
63. The Commissioner accepts that the planning process is generally an open process. However he cautions against making assumptions as to what issues the complainant may be interested in. It may be that other enquiries and requests made by the complainant suggest he is interested in the economic viability of the scheme but this is not necessarily the case.
64. As referred to above the Council has dealt with a number of other requests regarding this planning application and has responded to other information requests both from the complainant and others. Therefore information has been made available over and above that provided through the normal planning process. The Council argues that this goes some way to reducing the public interest in providing yet more information when account is taken of the disruption providing that information would cause.
65. Set against these arguments the Commissioner considers there will always be some public interest in disclosure to promote transparency and accountability of public authorities and to promote public awareness of the environmental issues. In particular there is a public interest in promoting effective public participation in environmental decision making.
66. The Council has acknowledged there is a great public interest in demonstrating how planning decisions have been reached. From its submission to the Commissioner, it is clear that there is significant local resistance from both individuals and the local parish council to this

particular planning application. The requested information is very likely to provide further clarification of the issues considered by the Council when determining the planning application. This would inform local participation in the planning process.

67. On balance the Commissioner finds that the public interest favours maintaining the exception. This is because of the impact responding to the request would have on the ability of the planning officers to carry out their day to day duties. The Commissioner finds that the Council was entitled to refuse the request under regulation 12(4)(b) and is not required to provide the requested correspondence.

Regulation 9 - Advice and assistance

68. Regulation 9(1) requires a public authority to provide advice and assistance to those who have made requests under the Regulations, so far as it would be reasonable to do so.
69. If the request was vexatious the Commissioner would not consider it reasonable to expect the Council to provide the complainant with advice and assistance. However the Commissioner has concluded that the request is not vexatious. Furthermore the Council only applied regulation 12(4)(b) on the basis that the request was vexatious during the Commissioner's investigation. At the time regulation 12(4)(b) was originally applied it was solely because of the cost involved in terms of time. Therefore it is appropriate to consider what advice and assistance it would be reasonable for the Council to have provided at that point.
70. The Secretary of State may issue a code of practice setting out how public authorities should comply with their duties under the EIR³. Such a code has been produced. Amongst other things it deals with what advice and assistance a public authority is expected to provide. Regulation 9(3) of the EIR states that a public authority will have satisfied the requirement to provide advice and assistance if it has complied with the Code of Practice. However at paragraph 9 (not to be confused with regulation 9 of the EIR) the Code of Practice says,
- “ 9. Every public authority should be ready to provide advice and assistance, including **but not necessarily limited to** the steps set out below.” (emphasis added)

³ https://ico.org.uk/media/for-organisations/documents/1644/environmental_information_regulations_code_of_practice.pdf

71. In effect this means that a public authority can comply with the steps set out in the Code of Practice but still fail to meet its duty to provide reasonable advice and assistance. This gives greater latitude in determining what level of advice and assistance is reasonable in any situation.
72. Where a public authority refuses a request under regulation 12(4)(b) on the basis of costs or time, the Commissioner would normally expect the public authority to provide advice and assistance to the applicant which would allow them to make a fresh, refined request, which would not be too onerous to comply with.
73. Of the forms of advice and assistance that the Code of Practice suggests could be offered there are a number which appear relevant to this situation.

The public authority should consider:

- Providing an outline of the different kinds of information that might meet the terms of the request,
 - Providing access to detailed catalogues and indexes, where these are available, to help the applicant ascertain the nature and extent of the information held, and
 - Providing a general response to the request setting out options for further information that could be provided on request.
74. As explained earlier this list is not exhaustive. It may be that the Council could suggest narrowing the request down by a time frame, or by limiting the parties to the correspondence.
 75. The Council has argued that complainant was offered advice and assistance. It has summarised the advice that was provided by the three planning officers involved in the planning application. This dates back to November 2013. The Commissioner recognises that the Council had extensive dealings with the complainant. However these communications all related to the complainant's concerns over the actual planning application and his grounds for objecting to it. They did not deal with the complainant's request or how it could be refined in order to make complying with it less onerous.
 76. The Commissioner has also considered the content of the Council's letter to the complainant dated 15 August 2014. This was sent following the Council's initial internal review which is when it first realised it held a large amount of additional information. The letter of the 15 August 2014 was the first time the complainant was informed that the information was being withheld on the grounds of cost and time, under regulation

12(4)(b). The letter does not offer any advice and assistance regarding how the request could be refined.

77. In light of this the Commissioner finds that the Council has not provided appropriate advice and assistance. The Commissioner therefore finds that the council has breached regulation 9. The Council is required to provide advice and assistance, so far as it would be reasonable to do so, aimed at helping the complainant make a refined request which would not be manifestly unreasonable.

Right of appeal

78. 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

79. 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.

80. 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

Gerrard Tracey
Principal Adviser
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF