

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 18 May 2015

**Public Authority:** Sheffield City Council  
**Address:** Town Hall  
Pinstone Street  
Sheffield  
S1 2HH

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

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1. The complainant has requested information from Sheffield City Council (the Council) about footpaths which cross his land. The Council has treated the request as manifestly unreasonable in accordance with section 12(4)(b).
2. The Commissioner's decision is that Sheffield City Council has correctly engaged regulation 12(4)(b). He does not require the Council to take any further steps.

### **Request and response**

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3. On 18 June 2014, the complainant wrote to the Council and requested information in the following terms:

*"I would like all the information the council holds on the 'footpaths' that are shown on the working copy of the definitive map but not on the real definitive map crossing my land at [named road]."*

4. On 24 June 2014, the Council responded advising that it would deal with the request under the Freedom of Information Act but that it would need further clarification of the requested information.
5. The complainant replied to the Council as follows:

*"I would like all the information you have on the subject. [named individual] has previously told me the footpaths were built as part of a landscape scheme related to the planning permission. I would like confirmation when they are first mentioned in the scheme for the land reclamation and any subsequent mentions. The footpaths are marked on the working copy of the definitive footpath map in reception I would especially like to see the record of when they were added and any additional information of this. I would like to know if the council has any confirmation from the land owner or anybody else that there was permission to build the footpaths. I would like any information on when the footpaths were built. If you cannot answer the questions please say you do not know, [named individual] previously told me the footpaths were built in 1989, I know this is incorrect but think you must have records. Please do not limit your response to these specific points and include all the information you hold."*

6. The Council replied on 16 July 2014. It broke the request down into five points/questions:

1. *I would like all the information you have on the subject.*
2. *[named individual] has previously told me the footpaths were built as part of a landscape scheme related to the planning permission. I would like confirmation when they are first mentioned in the scheme for the land reclamation and any subsequent mentions.*
3. *The footpaths are marked on the working copy of the definitive footpath map in reception I would especially like to see the record of when they were added and any additional information of this.*
4. *I would like to know if the council has any confirmation from the land owner or anybody else that there was permission to build the footpaths.*
5. *I would like any information on when the footpaths were built.*
- 6.

7. In respect of point 1, the Council stated that it had already provided all of the information it holds about the footpaths. It explained that under the FOIA it was not obliged to comply with repeated requests and the same was the case under the Environmental Information Regulations 2004 albeit that under this legislation repeated requests are deemed to be manifestly unreasonable. The Council explained that as the

complainant had requested this information on a number of occasions previously, it had decided to refuse this part of the request.

8. It further explained that under the EIR a public interest test was required but that having considered this, it was felt that the public interest lay in maintaining the exception.
9. Addressing point 2, the Council explained that the footpaths had become public footpaths as a result of common law dedicated paths, created as part of Planning Application. It asserted that the complainant had been provided with copies of the planning application in May 2008 and March 2010.
10. With regard to point 3, the Council referred to an email sent on 14 November 2011 which explained that the date when the paths were first shown on the definitive map cannot be confirmed as the information was held on its old style recording system.
11. In respect of point 4, the complainant was referred to the response to question 2 and in respect of point 5 he was referred to the responses to questions 1 and 2.
12. The complainant requested an internal review. The Council sent the outcome of its internal review on 8 August 2014. It upheld its original position.

### **Scope of the case**

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13. The complainant contacted the Commissioner on 11 October 2014 to complain about the way his request for information had been handled. He set out his concerns about the footpaths and specifically asked the Commissioner to ask the Council to provide the requested information if they have it.
14. The Commissioner considers the scope of the investigation is to determine if the Council has correctly applied regulation 12(4)(b) to the entire request. Although the Commissioner notes that the Council has applied regulation 12(4)(b) only to parts 1 and 4 of the request, he

has determined the scope of the investigation in relation to regulation 12(4)(b) covers the request made by the complainant on 18 June 2014 and his subsequent clarification. Neither was broken down and the Commissioner notes that points 2-5 as set out by the Council also

cover the subject of the footpaths and the fact that this issue has been previously dealt with.

## Reasons for decision

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### Is the information environmental information?

15. The Commissioner must first determine whether the requested information should be handled under the Freedom of Information Act (FOIA) or the Environmental information Regulations (EIR).

16. Regulation 2 provides the definition of environmental information for the purposes of the Regulations. It defines environmental information as:

*"any information in written, visual, aural, electronic or any other material form on-*

*(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;*

*(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);*

*(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;*

*(d) reports on the implementation of environmental legislation."*

17. The complainant requested information about landscape and planning. The Commissioner believes that any information relating to landscape

and planning would be environmental information by virtue of regulation 2(1)(a) and(c).

18. The duty to make available environmental information is set out in regulation 5 of the EIR.

**Regulation 12(4)(b)**

19. Regulation 12(4)(b) of the EIR states that:

*"12(4)...a public authority may refuse to disclose information to the extent that –  
(b) the request for information is manifestly unreasonable."*

20. The Commissioner's general approach to considering vexatious or manifestly unreasonable requests, as applied here, is broadly the same under both the FOIA and the EIR.
21. The Commissioner has considered the extent to which this request could be considered manifestly unreasonable or vexatious.
22. The term vexatious is not defined in the legislation. In *Information Commissioner vs Devon County Council and Dransfield*, the Upper Tribunal took the view that the ordinary dictionary definition of the word vexatious is only of limited use, because the question of whether a request is vexatious ultimately depends upon the circumstances surrounding that request. The Tribunal concluded that 'vexatious' could be defined as the "...manifestly unjustified, inappropriate or improper use of a formal procedure" (paragraph 27). The decision clearly establishes that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.
23. In the *Dransfield* case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) harassment or distress of and to staff.
24. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed the "importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).
25. The Commissioner has therefore considered whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to the serious purpose and value of the request. He

considers there is in effect a balancing exercise to be undertaken, weighing the evidence of the request's impact on the authority against its purpose and value.

26. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests<sup>1</sup>. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious or manifestly unreasonable.
27. There is no doubt that the nature of the requested information is of extreme importance to the complainant. In his submission to the Commissioner the complainant has provided some background to his request. In essence the complainant has been in dispute with the Council over a period of many years about a piece of land he purchased and the footpaths which cross his land which he believes to have been illegally created. In particular the complainant has asked the Commissioner to order the Council to disclose the information "if they have it".
28. The Council has provided the Commissioner with a submission in relation to the application of regulation 12(4)(b) and has provided some relevant background documents to support its submission.
29. The Council has, it asserts, corresponded with the complainant for a number of years and that this correspondence has included, information requests, complaints and planning enforcement action. The Council acknowledges that all of the correspondence relates to issues which have arisen from the complainant's purchase of some land and the footpaths which cross it.
30. In 2001 the complainant made a complaint about footpaths crossing his land which he asserted were incorrectly built. The Council confirmed that the footpaths were legal and that any review, as requested by the complainant, would be undertaken subject to resource issues. In June 2008 the complainant again requested information about the footpath scheme, drawings and accompanying information. The Council supplied the complainant with copies of the information provided in respect of a planning application (number provided).

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

31. The complainant and the Council held discussions between 2008 and 2010 regarding a land exchange agreement which could have resolved some of the issues but the negotiations broke down.
32. Since 2008, the complainant has, on numerous occasions, requested information and made complaints about the footpaths, has expressed dissatisfaction about the footpaths not being reviewed, sought information about conditions attached to a land exchange agreement and the requirement to pay for the footpaths to be diverted given that he believes they are not legal. The Council asserts that it has responded to requests and complaints in relation to this correspondence.
33. In its response to the complainant, the Council has made it clear, not only what it had provided but when it had provided it.
34. The Council has provided the Commissioner with a table detailing how and when it has corresponded with the complainant between 2008 and 2014. During that period the Council has received correspondence from the complainant on 45 occasions. During that time also the Council has had to provide information to the Local Government Ombudsman who was investigating one particular aspect of the complainant's case.
35. The Council explained that changes to FOI and EIR procedures in 2014 mean that performance has been improved and that the Council is able to readily identify repeated, persistent or manifestly unreasonable requests. With regard to this specific request, the Council believes that as the questions about the footpaths have already been answered, it is appropriate to apply regulation 12(4)(b).
36. The Commissioner considers that the Council has already spent a considerable amount of resources dealing with issues which arise from the complainant's purchase of the piece of land. He notes too that in 2013 the Council advised the complainant that it would have expected a due diligence process to have taken place on the complainant's part prior to agreeing any land transaction.
37. Given the volume and repetitive nature of the correspondence spanning almost seven years, the Commissioner is satisfied that the Council cannot realistically expect that the complainant will desist from corresponding with it about the footpaths. It is clear from his correspondence relating to this request and his correspondence to the Commissioner that the complainant believes the footpaths were illegally created and will continue to pursue the issue until the Council agrees with this position.
38. As already stated, there is no question that the information is extremely important to the complainant. However, the Commissioner accepts that



it has reached the stage of a stalemate with both parties entrenched in their position. The Council has clarified that it has previously provided all of the information relevant to the request and has therefore relied on regulation 12(4)(b) in order to refuse this request.

39. In all of the circumstances the Commissioner accepts that the Council has attempted over the years to handle requests for information, complaints, telephone calls and an investigation by the Local Government Ombudsman stemming from this land purchase and that in a bid to draw a line under the issue, has sought to rely on the application of 12(4)(b).
40. In considering this complaint, the Commissioner has satisfied himself that the volume of correspondence over the relevant period has caused significant distress and disruption to the Council and is likely to continue to cause a disproportionate level of disruption to the Council were it to continue. He is satisfied too that the Council has given due regard to the serious purpose and value of the request to the complainant and over many years has sought to provide what information it can. It has clearly stated that it has provided all of the information it holds.
41. However, the request and the nature of the correspondence has limited purpose and value other than to the complainant himself (and that purpose and value is further weakened in the context of the information previously provided to him) whilst the Council has a duty to ensure that its resources are properly allocated to ensure the best service for all users.
42. The Commissioner is satisfied therefore that the Council was correct to rely on the exception at regulation 12(4)(b).

#### Public interest test

43. All exceptions in the EIR are subject to the public interest test. Therefore, in deciding whether the information should be withheld the Commissioner has had to balance the public interest in maintaining the exception against the public interest in disclosure.
44. The Council considered that factors in favour of disclosure included the importance of transparency and public accountability which enables residents and other stakeholders to engage in decision making affecting their environment and locality, as well as understanding how public money is being spent.



45. In favour of maintaining the exception, the Council highlighted the need to prevent resources being spent on individual matters that take much needed resources away from delivering other public services.
46. The Commissioner has taken into account the burden and distraction that would be imposed on the Council and the wider public interest in protecting the integrity of the EIR and ensuring that they are used responsibly.
47. On balance the Commissioner finds that the public interest favours maintaining the exception as the burden imposed on the Council is already considerable and shows no sign of abating. The Commissioner's view is that the complainant's request is very personal and does not serve any wider public interest in environmental issues.
48. Therefore, in all the circumstances of the case the Commissioner finds that the balance of the public interest lies in maintaining the exception.

## Right of appeal

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49. 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 123 4504

Fax: 0870 739 5836

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)

50. 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.
51. 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**  
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