

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

Decision notice

Date: 23 July 2015

Public Authority: Department for Communities and Local Government

Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainants requested information from the Department for Communities and Local Government ("DCLG") relating to a complaint they had made about Arun District Council ("the council"). DCLG refused to respond to the requests on the basis that they were vexatious under section 14(1) of the Freedom of Information Act 2000 ("the FOIA"). The Commissioner considered that the requests should have been considered under the terms of the Environmental Information Regulations 2004 ("the EIR"). The Commissioner found that a significant amount of the information was the complainants' personal data and should have been considered under the separate subject access rights provided by the Data Protection Act 1998 ("the DPA"). The Commissioner found that the remaining information was excepted under regulation 12(4)(b) of the EIR and the public interest favoured maintaining the exception. There are no steps to take.

Request and response

2. The complainants requested information on 6 August 2014 from the authority in the following terms:

"We have been advised by Nick Gibb MP that he forwarded our email of 19th May 2014 to you on 20th May 2015, in which we requested a meeting with you to discuss our concerns relating to the conduct of Arun

District Council. We have had no response to date...

We also emailed you on 18th June 2014 and 10th July 2014 – again, we have had no response...

In order to provide context and to assist you in locating our communications we have appended our emails of 19th May and 18th June below, without appendices. Our email of 10th July is not appended.

The purpose of this Freedom of Information request is therefore to establish if you have received those communications.

1. All of the appendices included with our emails (this will establish if our emails have been received. By your publishing them we will know that our complaint has been received.

2. The letter from Nick Gibb MP in which he forwarded our concerns to you.

3. All internal communications relating to this matter including emails, notes of meetings, notes of phone calls etc.

4. All communications between ministers or officers from DCLG and councillors or officers at Arun District Council relating to our complaint”.

3. When the complainants did not receive a response, they wrote to request an internal review on 9 September 2014. They sent follow up reminders on 21 September 2014 and 16 October 2014.
4. Following a complaint, the Commissioner contacted the DCLG and established that it considered the request was vexatious. DCLG explained that it was relying on section 17(6) of the FOIA because it considered that the request was similar to an earlier request it had refused as vexatious from one of the complainants.
5. As DCLG had agreed to complete an internal review of the earlier request in any event, it included the requests forming the subject of this complaint in its review. DCLG completed its internal review on 9 December 2014. It said that it wished to maintain its position that the requests were vexatious.

Scope of the case

6. The complainants contacted the Commissioner on 27 October 2014 to complain about the way their requests for information had been handled. They complained that the council had failed to reply to their request initially. Once DCLG had clarified the basis for refusing to respond, the Commissioner clarified that the complainants wished the

Commissioner to consider whether section 14(1) had been correctly applied.

7. Following his consideration of the requests and the information falling within their scope, the Commissioner decided that the requests should be considered under the EIR. He has therefore considered the application of the equivalent exception provided by regulation 12(4)(b) of the EIR.
8. The Commissioner also considered that some of the information should have been considered under the separate subject access rights provided by section 7 of the DPA. This decision notice does not therefore relate to any of the information that is the personal data of the complainants as such information is excluded from consideration under the EIR by virtue of regulation 5(3). The Commissioner has completed a separate assessment relating to the complainants' personal data. For clarity, this concerns all of the information requested in points 1 and 2 of the request, and some of the information relating to points 3 and 4 of the request.

Reasons for decision

Environmental Information Regulations 2004

9. DCLG refused these requests under the FOIA. However, the Commissioner's view is that the requests should be considered under the terms of the EIR. This is because the requests relate to a complaint made by the complainants to DCLG about the conduct of the council. That complaint concerns the "Bognor Regis regeneration plan". This refers to proposals by the council to develop the town centre over a period of time. Such regeneration plans will affect the environment, in particular the land. Under regulation 2 of the EIR, any information on plans affecting or likely to affect any of the elements or factors listed in the EIR will be environmental information.
10. The equivalent exception to section 14(1) of the FOIA under the EIR is regulation 12(4)(b). This exception relates to manifestly unreasonable requests. Having decided that the requests should be considered under the EIR, the Commissioner considered the application of regulation 12(4)(b).

Regulation 12(4)(b)

11. Regulation 12(4)(b) of the EIR provides the following:

"For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –

(b) the request for information is manifestly unreasonable".

12. In accordance with regulation 12(1)(b), information may be withheld under regulation 12(4)(b) if:

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

13. The Commissioner has published guidance on applying section 14(1) of FOIA which relates to vexatious requests. While the guidance above is focused on section 14(1) of the FOIA, the Commissioner's general approach to applying regulation 12(4)(b) of the EIR is the same in relation to vexatious requests. For ease of reference, the Commissioner's guidance can be accessed here:

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

14. As discussed in the guidance, the relevant consideration is whether the request itself is vexatious rather than the individual(s) submitting it. Sometimes, it will be patently obvious when requests are vexatious. In cases where it is not so clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. This will usually be a matter of objectively judging the evidence of the impact on the authority and weighing this against any evidence about the purpose and value of the request. Public authorities may also take into account the context and history of the request where relevant.
15. As in many cases which give rise to the question of whether a request is vexatious, the evidence in the present case shows a history of previous information requests and various difficult encounters between the parties. DCLG relies on this history when characterising these request as vexatious.
16. DCLG explained that the background to this matter dates back to 2013 when the complainants expressed concerns to the council about the proposed regeneration plan in Bognor Regis. DCLG said that the council responded to those concerns. Towards the end of 2013, one of the complainants, who will be referred to as "complainant A" in this notice, asked Nick Gibb MP to intervene. He wrote to the council and received a response. Complainant A also contacted the then Secretary of State for Communities and Local Government, the Rt Hon Sir Eric Pickles MP. He alleged that the council was acting improperly in that correspondence.

17. Following further concerns expressed in correspondence to DCLG by complainant A, the matter was initially handled by a junior policy official at DCLG, who made contact with the council to discuss the concerns. DCLG said it had explained the limitations of its role to complainant A, and what the best course of action would be if he wished to take the matter forward. In particular, DCLG had written to complainant A explaining that there had been a special meeting at the council and the majority vote was to continue with the regeneration plans. It said that there had been extensive consultation and the developer had been chosen after competitive tendering. DCLG said that the complainant should contact the council or a councillor directly if he required any further information or the Local Government Ombudsman who has an interest in complaints mechanisms.
18. Complainant A was dissatisfied with DCLG's actions and subsequently made a series of serious allegations of improper behaviour, cover ups and incompetence. DCLG said that these allegations were directed at the individual policy official who had dealt with the matter and others including Sir Eric Pickles, and Mr Gibb. Complainant A also wrote to the Prime Minister, David Cameron. Complainant A refused to accept the limitations of DCLG's role in this matter. All of the complainants subsequently contacted Mr Gibb to try to get a meeting with Sir Eric Pickles but this was refused.
19. DCLG said that dealing with the complainant's correspondence had been a significant burden and it argued that responding to the additional requests forming the subject of this complaint would be likely to cause a disproportionate and unjustified level of disruption, irritation and distress. As part of its internal review, DCLG produced a table of some of the correspondence relating to this matter. It also sent a chronology of events to the Commissioner, showing that there had been significant contact although the majority of this contact had been with complainant A.
20. The Commissioner has seen evidence of contact involving a variety of officials relating to this matter, including ministers and MPs. The Cabinet Office was also asked to look into procurement issues by one of the complainants. The evidence included previous requests for information made by complainant A. The details of these requests are as follows:

Request made on 18 October 2013 by complainant A

"To provide copies of all communications that have taken place between DCLG and any and other parties regarding the investigation of Arun District Council and anyone lobbying to stop the investigation of the council".

Request received on 20 December 2013 by complainant A

"...all communications of any sort regarding Arun District Council investigation, sent to me. I hereby require these communications, as I am allowed, under the Freedom of Information Act, which [name] has refused to abide by. [name] has advised me that you, Mr Pickles, as Secretary of State for Local Government have no power over local government. Please advise me if this is correct, with evidential proof".

Request made on 5 February 2014 by complainant A

"To provide copies/details of all communications, verbal or written that the DCLG had with Arun District Council that emanated from my letters to Secretary of State for Communities and Local Government, Eric Pickles, regarding the Bognor Regis regeneration plan.

This request to include full disclosure of any lobbying or request to Eric Pickles, or the DCLG, from anyone to stop the communications of the DCLG with Arun District Council over the Bognor Regis Regeneration Plan.

I also require under this freedom of information request that the DCLG provide me with a copy of their remit where it states that the DCLG cannot investigate or interfere with a local authority such as Arun District Council".

Request made on 19 June 2014 by complainant A

"Under the Freedom of Information Act 2000 I request a copy of Mr Gibbs letter dated 20th May to the minister of state (DCLG) and would appreciate this at the soonest in order that we may appraise ourselves of the content in advance of our meeting with Eric Pickles. My FOI request includes all communications between the DCLG and our MP Nick Gibb since Mr Gibb's letter of 20th May 2014".

21. DCLG said that it had responded to the above requests. In relation to the requests in October and December 2013, it said that this information was not held as there had not been any investigation. Regarding the request in February 2014, DCLG said that it had provided the information held relating to communications with the council, although very little was held. It said there was no information about lobbying. On the subject of its remit, DCLG said that there is no single document but it provided an internet link setting out the broad responsibilities of the department. It subsequently added that its powers are available from a range of sources, such as section 10 of the Local Government Act 1999 and the Localism Act 2011. It referred to the exemption provided by section 21 of the FOIA which relates to information available by other

means. DCLG said that it was not prepared to offer any interpretation of those powers or a complete list of its powers as that would constitute providing legal advice to the public. The final request on 19 June 2014 was refused as vexatious and is the subject of a separate investigation by the Commissioner.

22. DCLG said that it had found much of the correspondence from complainant A to be aggressive, accusatory, and that it had contained a number of inaccurate statements and allegations not supported by appropriate evidence and this had added to the unreasonable impact of the correspondence. DCLG said that complainant A had accused the Parliamentary under Secretary, Brandon Lewis MP, of being aggressive and "not capable of carrying out such important tasks" and "unsuitable to deal with our issues". On another occasion, it said that Mr Gibb had been referred to as "not fit for purpose". It added that the staff member who had dealt with the initial enquiry had found the matter distressing. It highlighted some examples, including correspondence sent to Sir Eric Pickles in which the staff member had been accused of "being guilty of inappropriate behaviour in a public office..." DCLG said that while it accepts that public authorities and officials may occasionally be subjected to this type of behaviour, it said that this represented a "sustained attack on ministers and staff" rather than a one off event.
23. DCLG said it had also found the correspondence burdensome because of the approach taken by the complainants, sometimes writing as a group and sometimes making contact as individuals. It said that this had raised privacy issues and made it more difficult to consider the requests that have been made and to manage the correspondence as a whole.
24. DCLG has also questioned the value of responding to these requests, arguing that the requests were reflective of a disproportionate level of persistence. It said that it considered that the complainants were attempting to use the legislation inappropriately as a way of trying to reopen this matter since DCLG had refused to respond any further and had made it clear that it considered that the issues should be dealt with on a local level. DCLG said that it did not consider that the main purpose of the requests was to seek recorded information but rather the primary motivation was to pursue the complainants' grievances about the way the matter was handled and pressure DCLG into reopening the matter or starting an investigation.
25. The complainants have argued that these requests are not vexatious. They have argued that DCLG was wrong to claim that they had not started to conduct an investigation into the council, and wrong to claim that they had no remit to do so. The complainants allege that an investigation was started and then stopped because of improper pressure from other sources. The complainants have expressed a

number of concerns about the council. They say that there have been two votes of no confidence in the council's cabinet (which DCLG disputes). The complainants argued that this is evidence that the requests are not vexatious, because others share their concerns about the council's conduct.

26. Complainant A has said that the council is wrong to suggest that there is a link between these requests and his previous requests, and it is wrong to suggest that he is merely trying to reopen the case. He said that there was a valid reason for each request, and the repetitious element seen in his requests was the result of frustration that correspondence was being "ignored". He has said that it is in the public interest to pursue these issues.
27. Another of the complainants has argued that these requests should not be linked to the requests made by complainant A. He said that this is "guilt by association" and just because it is considered that correspondence from one of the complainants is vexatious it is unfair to extend that to correspondence from all of them. He argued that correspondence from all of them had raised many new points and it is entirely wrong to suggest that the two matters are a continuation of the same thing.
28. Turning now to the question of whether the requests were vexatious in the Commissioner's view. It is clearly a matter of public interest that public authorities are accountable and transparent about their actions. In this particular case, the complainants have expressed serious concerns about the Bognor Regis regeneration plan and the actions of the council. There is a public interest in how these concerns were dealt with by the DCLG. However, this must be balanced against the concerns raised by the DCLG about responding to these requests.
29. It is fair in the Commissioner's view for DCLG to consider these requests in the context of a wider pattern of behaviour by the complainants. It is clearly part of an ongoing chain of correspondence and requests relating to the complainants' concerns about the Bognor Regis regeneration plans and the council, which has been difficult to manage, and which the Commissioner accepts has caused a significant burden. All of the requests focus on challenging the DCLG's approach to these issues and its assertion that these problems should be considered at a local level.
30. The Commissioner was not persuaded by the claim that it was not fair to regard the requests on 6 August 2014 as part of this pattern of behaviour, linked to the requests and correspondence previously received from complainant A. The requests on 6 August 2014 made by all of the complainants are, as DCLG points out, made in very similar terms to the earlier requests made by complainant A and are a

continuation of the same theme. It is evident from the face of the correspondence that the remaining complainants share the concerns expressed by complainant A about the council and about the way DCLG handled the issues initially raised by complainant A, and have involved themselves quite clearly in those concerns. All of the complainants raised concerns about the council in 2013, and although these concerns were primarily pursued by complainant A with the DCLG initially, there is plenty of evidence to suggest that the complainants were acting together in the matter and they were in contact with DCLG at the same time. Indeed, the closely shared interests of the complainants are specifically referred to in an email from one of the complainants addressed to Mr Gibb in the following terms:

"[Complainant A] raised concerns with DCLG in 4th October 2013 and, as a result, an investigation was commenced by [name] of DCLG who was initially very helpful...Suddenly, [name] became very defensive and denied having commenced the investigation (which became an "enquiry") and stated that an investigation is outside the remit of the DCLG. We are concerned that undue influence may have been applied to halt the investigation".

31. The DCLG has highlighted that the complainants have tried to disassociate themselves at times. However, it is too artificial in the Commissioner's view to try to claim that the collective impact of their correspondence should be disregarded in favour of looking at it in isolation depending on whose name is on the correspondence. The complainants frequently refer to each other in the correspondence and often write referring to themselves as "we" and making reference to "our complaint", underlining their joint interests. At least two of them are part of a particular named society. On the balance of probabilities, this is a shared campaign pursued by all the parties. The Commissioner has made it clear in his guidance on dealing with vexatious requests that the wider context is often an important and necessary consideration.
32. The Commissioner also agrees with DCLG that at times the complainants have taken a disproportionate and inappropriate approach. A number of serious allegations regarding improper conduct were made in correspondence sent to the Commissioner or the DCLG from complainant A which were not supported appropriately by evidence. Complainant A appears to believe that a conspiracy extending to the most senior levels of government has taken place to cover up what he alleges has happened. The Commissioner has included some of the many allegations of improper behaviour below:

"...I believe they [the DCLG] have been interfered with by Arun District Council and possibly a member of the government as the DCLG started

an investigation into Arun District Council and suddenly stopped it". (15 September 2014)

"I have made many complaints to David Cameron and asked for investigations to be made...I believe that Mr Cameron or his aides have tried to cover up what has transpired between us and for any wrong doing by themselves or the Government" (7 November 2014).

"Nick Gibb MP told all of us that he cannot afford to do anything that might upset Arun District Council and it may be possible that Nick Gibb did not do anything for this reason" (5 January 2015)

"I also believe that there is a cover up of Arun District Council's wrong doing as it is a Conservative Council and that [name]'s decision is politically motivated" (5 January 2015)

33. In correspondence addressed to Nick Gibb MP signed by another of the complainants, the following comments are made:

"We are concerned that Arun District Council is, quite deliberately, refusing to accept the requirements of the Localism Act and to properly engage with the public".

"We are concerned that DCLG may be colluding with ADC in covering up the fact that an investigation took place" (19 May 2014)

34. As noted, DCLG has questioned the value in responding to these requests and it has suggested that the motivation is to reopen the matter, which has been closed for reasons that have been explained. The complainants are clearly of the view that DCLG can and should have investigated the concerns they raised about the council. This seems to be the main driver behind the requests. They have referred to an investigation undertaken into the London Borough of Tower Hamlets. However, DCLG has explained to the complainants that no investigation took place into Arun District Council. It has explained its broad responsibility for "supporting local government by giving them the power to act for their own community without interference from central government". It said that an investigation would not be within DCLG's remit unless there is comprehensive evidence of ongoing and severe corruption or similar wrongdoing. DCLG was not of the view that the complainants had provided sufficient evidence on this occasion and so no further action was taken.
35. The Commissioner asked DCLG to provide some further clarification about its powers. It said that section 10 of the Local Government Act 1999 ("the LGA 1999") gave powers to the Audit Commission to carry out inspections of a "best value" authority's compliance with the "best value duty". It also sets out a council's duty to make arrangements to

secure continuous improvements in the way in which their functions are exercised, having regard to a combination of economy, efficiency and effectiveness. The LGA 1999 also gave the Secretary of State powers to direct the Audit Commission to carry out an inspection of an authority, although the Secretary of State had no powers to appoint any other person or body to carry out such an inspection.

36. The Local Audit and Accountability Act 2014 amended the LGA 1999 with regard to "best value inspections" to give the Secretary of State power to appoint a person to carry out an inspection of a specified authority's compliance with its duties. This was in recognition that the Audit Commission was to be abolished under the same act, and this was the power under which a third party was appointed to do an inspection of the London Borough of Tower Hamlets on 4 April 2014.
37. DCLG said that during the last parliament, it was always possible for the Secretary of State to commission an inspection of an authority, be that by directing the Audit Commission to undertake such an inspection, or by appointing inspectors himself. However, a central part of the coalition government "localist" approach was that any such powers should be used rarely. DCLG explained that given the key role for sector led improvement, it was very unusual for the government to ask directly to inspect a council. In fact, this has only happened twice in the last five years in Rotherham and Tower Hamlets and notably, this was in response to evidence of severe, sustained and ongoing failures.
38. DCLG said that because the previous government, like the present government, was very keen on decentralisation, DCLG's main advice to any individuals who wrote to complain about their local authority was and is that the government do not intervene in their day to day affairs, as local authorities act independently of central government and ministers have no remit to intervene except where specific provision has been made by an Act of Parliament. It said that it usually stresses that local authorities are accountable for their actions to their electorate and must act within their statutory powers. It advises individuals who are concerned to make a complaint through the council's formal complaints procedure. If an individual feels that they have not received adequate redress through the complaints process, they may approach the Local Government Ombudsman. Where there are specific concerns such as financial concerns, DCLG said it may recommend an approach to the council's auditors or its monitoring officer.
39. Having reviewed all of the correspondence, the Commissioner's view is that DCLG could have been clearer in its written responses about its role and why it was not going to conduct an investigation similar to the one undertaken in Tower Hamlets in response to the complainants' concerns. It is possible that this may have been explained more fully over the

telephone but there is no record of what was discussed. However, DCLG has made it clear that it does not intend to pursue this issue, and that its view is that it should be considered on a local level, for example, through the council's own complaints procedure or other appropriate local mechanisms. DCLG is entitled to make that judgement and it is not appropriate for the complainants to continually pressure DCLG into revisiting that issue against this background though the use of information access legislation.

40. The Commissioner does ultimately agree with DCLG that the requests lack sufficient serious purpose or value to outweigh the concerns expressed by the DCLG as described above, which are accepted by the Commissioner. There seems to be no reason why receipt of every last piece of information held by the DCLG about how it handled this matter would materially affect the outcome that has been communicated on numerous occasions. DCLG has provided a reasonable explanation of its actions, and provided appropriate re-direction. No information has been presented to the Commissioner to suggest that the complainants have properly explored local avenues of complaint with appropriate supporting evidence. Rather, the requests appear to be part of an unreasonably persistent campaign by all of the complainants to pressure DCLG into investigating their concerns about the council, despite DCLG's refusal to do so. Representations have been made to a senior level at the DCLG and that refusal has been maintained.
41. In view of the above, the Commissioner decided that on the balance of probabilities, DCLG had presented a persuasive case to support their application of the use of regulation 12(4)(b). The Commissioner's view is that the approach taken by the complainants has created a disproportionate burden on DCLG. The complainants have not argued convincingly that there is sufficient value to these requests to justify the continuation of that burden through disclosure under the EIR. It is notable that the complainants have already seen the content of DCLG's communication with the council and this only prompted a further unproductive challenge, seeking the "proper investigation" referred to in correspondence from one of the complainants to the DCLG on 24 December 2013. There has to come a point where an ongoing dispute about a public body's decision not to intervene should be brought to an end.
42. Regulation 12(4)(b) is subject to a public interest test. The Commissioner's analysis above explains why he has formed the view that the public interest does not favour responding to these particular requests. The Commissioner would add to this the general comments that the legislation gives individuals unprecedented rights to access information held by public authorities. It is important that those rights are exercised responsibly. It is not the intention of the legislation that

individuals should be allowed to pursue grievances to an unreasonable extent or that valuable and limited resources should be spent on continuous, unproductive exchanges. In this case, the public interest is best served by protecting DCLG's resources and upholding the refusal to respond using regulation 12(4)(b) of the EIR.

Right of appeal

43. 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

44. 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.
45. 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

Andrew White
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