

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

Decision notice

Date: 21 April 2015

Public Authority: Milton Keynes Council
Address: Civic Offices
1 Saxton Gate East
Central Milton Keynes
MK9 3EJ

Decision (including any steps ordered)

1. The complainant requested information from Milton Keynes Council ("the council") about whether there had been an application for adverse possession of a particular area of land. The council refused to respond to the request on the basis that it was vexatious under section 14(1) of the Freedom of Information Act 2000 ("the FOIA"). The Commissioner's decision is that the request should have been considered under the terms of the Environmental Information Regulations 2004 ("the EIR"). He found that the exception under regulation 12(4)(b), which relates to manifestly unreasonable requests, was engaged and the public interest did not favour disclosure. The council breached regulation 14(2) and 14(3)(a) and (b) because it did not rely on regulation 12(4)(b) of the EIR. There are no steps to take.

Request and response

2. On 17 November 2014, the complainants requested information from the council in the following terms:

"Has any application been made for adverse possession of the blue section of Milton Keynes Council land, that was on the title plan for [address]. You already have this section highlighted in title plans from the land registry".

3. The council replied on 19 November 2014. It said it had decided that this request was vexatious under section 14(1) of the FOIA.
4. The complainants asked for an internal review on 15 December 2014.
5. The council completed an internal review on 8 January 2015. The council said that it wished to maintain its position.

Scope of the case

6. The complainants contacted the Commissioner on 13 January 2015 to complain about the way their request for information had been handled. They specifically asked the Commissioner to consider whether the council had correctly refused to respond to their request using section 14(1) of the FOIA.

Reasons for decision

The EIR

7. Regulation 2(1)(c) of the EIR provides that environmental information is any information on activities affecting or likely to affect the elements of the environment listed in regulation 2(1)(a). One of the elements listed is land.
8. This request was handled by the council under the FOIA. However, the Commissioner considers that the request should have been considered under the EIR. This is because the request relates to the ownership of the land. Ownership of land has a bearing how that land may be used.

Regulation 12(4)(b) of the EIR

9. 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".

10. 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".

11. The Commissioner has published guidance on applying section 14(1) of FOIA, an exemption relating to vexatious requests. For ease of reference, it can be accessed here:

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

12. 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. Given this, the Commissioner has considered its application to this request.
13. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious rather than the individual or individuals 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.
14. The background to this matter is that the complainants are unhappy about what has happened regarding a piece of land between their property and the neighbouring property. The council explained that the complainants believe that the disputed area of land has been illegally obtained by their neighbours, who subsequently built an extension on the land.
15. The council said that it had decided to treat the request as vexatious in view of the complete context and long history of the matter. The history of the complainants' correspondence with the council about this issue dates back to 1998, when the council received the first request relating to the matter. The council said that it considered the latest request was part of a pattern of behaviour that had now become obsessive and was imposing a significant burden on the council. The council said that the request was part of the same campaign relating to the complainants' interest in whether or not the land had been illegally obtained. It said that based on its previous experience of dealing with the complainants, it was extremely likely that responding to this request would only lead to further requests and correspondence without providing a productive resolution. The council argued that the request lacked serious purpose or value for this reason.
16. The council explained that the complainants had already made a number of information requests and enquiries relating to this matter prior to this

one, which relates to any application for adverse possession of the land. For clarity, adverse possession is a method of acquiring title to property by possession for a statutory period under certain conditions. The council said that it had responded to that request previously on several occasions, and informed the complainants that there had not been an application for adverse possession of the land. The council said that it had responded to all the enquiries made and provided all the information available relating to this dispute. Nonetheless, the complainants never seem to be satisfied, leading the council to question the serious purpose or value in responding to this request.

17. The council supplied evidence to the Commissioner demonstrating that the complainants' contact with the council had generated a large amount of correspondence over a long period of time. The council provided a table showing a chronology of some of the more recent contact it had had with the complainants. It said that in view of the volume and frequency of the correspondence, which was of a repetitive nature, the council had made the decision to allocate a single point of contact to the complainants during 2012. To demonstrate the frequency of contact, between 30 April 2012 and 12 May 2012 alone, the council said that it had received 10 requests from the complainants. It was apparent that the correspondence had been difficult to manage not least because the complainants had written to a number of different council officers including the Chief Executive. In a letter on 24 April 2012, the council characterised the ongoing correspondence as repeats of existing requests, the complainants' opinions or statements about the same issues or requests for opinions and comments from the council.
18. The council said that it had on a number of occasions drew the complainants' attention to the existence of section 14(1) of the FOIA and that it would be considered in the future if there was no change in the pattern of behaviour. However, it told the Commissioner in a letter on 16 May 2012 that reliance on this exemption would be considered as a "last resort". Even after the council had refused to respond to some requests using section 14(1), the complainants continued to pursue the issue.
19. Many of the requests and correspondence supplied to the Commissioner were clearly connected to the ongoing dispute about the area of land. The requests covered a variety of information including the following:
 - On 26 November 2009, a request for the title plan from 1982 and 1983 for the complainants' property, the date the title plan was changed and if it was changed because of adverse possession, a title plan relating to the neighbouring property from 1980, the date when information relating to a building application had been destroyed and building regulations relating to the neighbours' garage.

- On 30 May 2010, requests for information relating to how much land had been lost by the council because of adverse possession and information about title plans.
 - On 1 January 2011, requests for title plans relating to the complainants' property from 1980 to 1998 and a statement that the land was not in the ownership of the council after 1980.
 - On 19 and 23 April 2012, requests for a copy of the sale file relating to the complainants' property and a hand-written note referred to by the council relating to the property sale
 - On 30 April 2012, requests relating to land surveyors, whether the council had updated a title plan in 2004, photographs taken during a survey of the complainants' property, who would have decided not to ask about the garage at that time, work experience records from 1977 and 1978 to prove that the complainant was capable of understanding a title plan, at what point land loss would trigger a legal response
 - On 17 May 2012 and 1 June 2012, a request for all plans and paperwork relating to the complainants' property held by a contractor or the council
 - On 2 June 2012, a request for conveyance documents for the complainants' property from 1982
 - On 12 September 2014, a request for copies of plans relating to the building of the neighbours' garage and porch in 1987
 - On 18 September 2014, a request for information about planning permission relating to the neighbours' drive
20. The council said that it had made its position on the substantive issue raised by the complainants clear and it argued that the latest request lacked serious purpose or value for this reason as well. The council said that it had carried out comprehensive internal reviews and that there have also been previous complaints by the same complainants to the Commissioner relating to this area of land. The council said that it had informed the complainants quite clearly that it does not intend to take any further action in relation to this issue but this had not stopped the ongoing contact.
21. The council supplied the Commissioner with a copy of a letter from the council's customer service department dated 8 March 2012. In this letter, the council said that it had investigated the situation and could confirm that it had not transferred the disputed area of land to the complainants' neighbours. It said that it had made enquiries of the Land Registry and had been advised by it that it had received a request from

solicitors acting on behalf of the complainants' neighbours. The request asked for the land to be included in the title to the property. The solicitors confirmed that it formed part of the property and did not conflict with the verbal description in the deed. The Land Registry told the council that it had not contacted the council at the time because it did not appear that there would be any reason why the council would wish to retain the land.

22. The council said that there was a hand-written note in the council's property services file, which appears to have been made when the plans were made for the council's sale of the complainants' property to them. The note recorded that "No.8's extension is party on our land at the front NE corner and side. I've drawn plans as is now". The council said that the implication of this is that the sale of the complainants' property to them excluded the disputed land, since it had already been built on by the complainants' neighbours. The council clarified in subsequent correspondence with the Commissioner on 16 May 2012 relating to a different complaint that it was not possible to understand what happened in relation to the observation on the note since it dates back to 1988. However, the council considered that it was likely that a decision had been taken not to pursue the issue at the time because the extension had been built for 9 years by that point and a relatively small piece of land had been affected. The council said that for this reason, there would be no record of any claim for adverse possession.
23. The letter also referred to an earlier letter sent by the council's democratic services department in 2010, which included the following comments about the land dispute:

"The boundary problems arose from your willingness to accommodate your previous neighbours wish to develop a drive, garage and hedge. In each case you rightly asked them to contact the Housing Department. It is clear from the Council's records that this never happened. In hindsight, it would have been in your interests to have made these enquiries of the housing department yourself. Subsequently, both properties have been sold to the sitting tenants on the basis of the Council at the time. They are now both private properties and the responsibility for ensuring that the plans are correct rests not with the Council but with you and your neighbours as current occupiers".

24. The council made it clear that it wished to maintain the view that it had expressed in 2010 and that it would not be taking any further action on this issue. It said that while it understood the complainants' concerns, given the time that had elapsed since the land had been built upon it is unlikely that the council would succeed if it were to pursue the matter in the courts. It also highlighted that to do so would involve considerable expense. The council said that while it was not prepared to enter into

further correspondence on the issue, it highlighted that the complainants could approach the Local Government Ombudsman if they wished.

25. The complainants have argued that the request should not be treated as vexatious because it would be simple to answer and also because of the passage of time since the council last told them that there had been no claim of adverse possession. The complainants suggested that this meant that the request could not fairly be seen as obsessive.
26. Turning now to the issue of whether the request was 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 concerns about the sequence of events relating to a piece of council land being built upon by their neighbours, which was added to their neighbours' property deeds at the Land Registry. There is a public interest in public authorities managing their assets properly and being able to account for what has happened to them. However, the Commissioner does ultimately agree with the council that the approach taken by the complainants to this issue has been disproportionate as a whole.
27. It is fair in the Commissioner's view for the council to consider these requests in the context of the wider pattern of behaviour by the complainants, rather than viewing this request in isolation. It is clearly part of an ongoing chain of correspondence and requests relating to the land dispute. In this case, the council has been able to demonstrate that it has engaged to a significant extent with the complainants, responding to the many requests, enquiries and complaints made relating to this matter over a period of 17 years. The Commissioner accepts the council's argument that the latest request demonstrates an unreasonable preoccupation with requesting information from the council about this matter.
28. The evidence supplied to the Commissioner shows a large number of convoluted enquiries and requests being made of the council over a long period of time. Responding to any number of requests and complaints does not seem to satisfy the complainants. Against this background, the Commissioner agrees with the council that responding to this request would be highly unlikely to resolve the underlying complaint about the land. It would instead only lead to further requests. It is not apparent to the Commissioner what the complainants are hoping to achieve from making continuous requests of the council when the council has made it clear that it does not intend to pursue further action, and has explained the reasons why. The council has also referred appropriately to the option of making a complaint to the Local Government Ombudsman.

29. The complainants have said that the request would be simple to respond to. That seems to be the case however the Commissioner has highlighted that the complete context and history of a request should be considered. As mentioned above, while a response to this request may be quite simple, it would not be likely to stop further requests in the future. The council has queried whether there is any serious purpose or value to this request given that it has already explained that the council is not challenging the use of land on several occasions. It does not appear that the complainants have any good reason for supposing that the situation regarding adverse possession has changed since the council last responded on that issue and confirmed that this information was not held.
30. For the avoidance of doubt, it is not the Commissioner's role to judge whether the council acted correctly in the way this land issue was handled. As described, the Commissioner is able to judge whether there was an appropriate sense of proportion to the request in line with his guidance. He found that there was not for the reasons outlined above. The complainants have not argued persuasively that there is any value in this request that would outweigh the significant impact on the council over an exceptionally long period of time. The Commissioner did not consider that the request itself had sufficient inherent value. The Commissioner therefore agrees with the council that this request was manifestly unreasonable and was therefore excepted under regulation 12(4)(b).
31. The Commissioner's analysis above explains why the Commissioner has formed the view that the public interest favoured withholding the information in this case. 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 the council's resources and upholding the refusal to respond to these requests.

Regulation 14(2) and 14(3)(a) and (b)

32. Under regulation 14(2), and 14(3)(a) and (b) of the EIR, public authorities must specify the exception relied upon and the matters the public authority considered in respect of the public interest test. This must be done within 20 working days. As the council did not rely on regulation 12(4)(b) of the EIR in this case, it breached these regulations.

Right of appeal

33. 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

34. 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.
35. 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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