

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 25 October 2016

Public Authority: Cheshire West and Chester Council
Address: HQ, 58 Nicholas Street
Chester
CH1 2NP

Decision (including any steps ordered)

1. The complainant has made nine requests for information to Cheshire West and Chester Council (the council) relating to Mill View Primary School. The council has refused these requests under regulation 12(4)(b) as it considers them to be manifestly unreasonable.
2. The Commissioner's decision is that the council has correctly applied regulation 12(4)(b) to the requests.

Request and response

3. Between 7 July 2015 and 21 September 2015, the complainant made nine requests for information under the EIR to the council. These are contained within the annex to this decision notice. The requests all broadly related to Mill View Primary School, particularly the history of the school's planning permission.
4. The council responded to the request of 7 July 2015 on 14 September 2015. It stated that the requested information was withheld under regulation 12(4)(e) as the information was internal communications.
5. The complainant requested a review of this request on 26 September 2015.
6. The remaining 8 requests were acknowledged by the council on either 14 or 22 September 2015.

7. On 9 October 2015 the complainant and the council agreed to put the outstanding eight requests and the outstanding internal review request on hold whilst an independent review of his complaints about the council and about Mill View Primary School was undertaken.
8. On 17 March 2016 the complainant contacted the council to ask if his requests could be resumed because he had been informed that the independent reviewer had completed his investigation.
9. The council provided the complainant with a copy of the independent reviewer's report on 7 April 2016. He then emailed the council on 8 April 2016 formally requesting that the above outstanding requests and the outstanding internal review request were resumed.
10. The council then responded to the eight requests dated 17 August – 21 September in one response on 3 May 2016. This stated that the council considered that all eight requests were manifestly unreasonable under regulation 12(4)(b) as they were vexatious. Specifically, it explained that the burden of complying with the requests was too great and would lead to a significant diversion of resources.
11. The council also provided the internal review outcome of the 7 July request on 26 May 2016. It stated that although the council had initially relied on regulation 12(4)(e) to withhold the information, it now considered that regulation 12(4)(b) applied to this request.
12. The council then provided an internal review of the remaining eight requests on 7 June 2016 in which it maintained its original position that regulation 12(4)(b) applied as the requests were manifestly unreasonable and vexatious.

Scope of the case

13. The complainant contacted the Commissioner on 26 May 2016 and 7 June 2016 to complain about the way his requests for information had been handled.
14. He specifically complained that the council's response to the request of 7 July 2015 was unlawful. He also complained that in relation to the other eight requests, the council had failed to consider the detail of each request and had instead unlawfully classed him as a vexatious individual.
15. The council has confirmed to the Commissioner that its final position in relation to all nine requests is that regulation 12(4)(b) applies as it considers the requests to be manifestly unreasonable.

16. The Commissioner therefore considers the scope of this case to be to determine whether the council has correctly applied regulation 12(4)(b) to the requests.

Reasons for decision

Regulation 12(4)(b) – where a request is manifestly unreasonable

17. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose environmental information to the extent that the request for information is manifestly unreasonable.
18. There is no definition of 'manifestly unreasonable' under the EIR. The Commissioner considers that 'manifestly' implies that the request should 'obviously' or 'clearly' be unreasonable.
19. A request can be manifestly unreasonable for two reasons: Firstly where it is vexatious and secondly where the public authority would incur unreasonable costs or where there would be an unreasonable diversion of resources.
20. There is no definition of the term "vexatious" in the Freedom of Information Act, however the issue of vexatious requests has been considered by the Upper Tribunal in the case of *The Information Commissioner and Devon County Council v Mr Alan Dransfield* (GIA/3037/2011). In the Dransfield case the Tribunal concluded that the term could be defined as "manifestly unjustified, inappropriate or improper use of formal procedure." The Tribunal identified four factors likely to be relevant in vexatious requests:
 - The burden imposed by the request on the public authority and its staff
 - The motive of the requestor
 - Harassment or distress caused to staff
 - The value or serious purpose of the request.
21. The Upper Tribunal's decision established the concepts of "proportionality" and "justification" as being central to any consideration of whether a request for information is vexatious.
22. The key to determining whether a request is vexatious is a consideration of whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear it is necessary to weigh the impact of the request on the public authority

against the purpose and value of the request. To do this a public authority must be permitted to take into account wider factors associated with the request, such as its background and history.

23. The council has set out the background to these requests and its decision to refuse them as manifestly unreasonable. It explained that the complainant has been in dispute with the council since at least July 2014. This is primarily related to concerns he has about a 'Forest School' operated by Mill View Primary School (operated by Cheshire Academies Trust) on land which borders the complainant's property.
24. The initial complaint was about the noise and other alleged nuisances from the Forest School. However, since then the complainant has escalated matters to the point where the council felt that the best course of action was to commission an independent review and report of the complainant's issues and concerns. The council said that the report was intended to reach a conclusion on each of the issues the complainant raised, and to learn any lessons from the situation.
25. The independent reviewer agreed the scope of the review with the complainant, which encompassed 35 issues with the council, and set out 19 desired outcomes. On completion of the review, the council's Chief Executive wrote to the complainant on 7 April 2016 to provide a copy of the report and outline that all the desired outcomes regarding a transparent and independent investigation had been met. He stated that whilst the report does not support the allegations and contentions on most issues, it did make 23 recommendations to the council for improvement. The Chief Executive informed the complainant that he now considered all matters covered by this review at an end.
26. The council has provided the Commissioner with a copy of the report in order to demonstrate the level of burden the complainant's requests and other interactions have placed on the council.
27. The complainant has sent 23 direct requests for information to the council's Solutions Team in a 13 month period. Further to this, the independent review noted that in addition to the eight requests the complainant had placed on hold for the duration of the review, he had also advised that he had another six new requests awaiting the outcome of the review.
28. In addition to the requests for information and subsequent reviews, the council also highlighted that the complainant has submitted complaints to the Information Commissioner's Office, the Local Government Ombudsman, the Parliamentary and Health Service Ombudsman, Sport England, Ofsted, successive local councillors, successive council leaders and successive members of parliament. In November 2015 he also

commenced a private nuisance action in the County Court against Cheshire Academies Trust, which has operated Mill View Primary School since January 2015. The complainant has reserved the council as co-defendants.

29. The report found that the council has expended considerable resources in both dealing with the various requests for information and also managing and addressing the other issues and complaints raised by the complainant in relation to Mill View Primary School. The council informed the reviewer that it was concerned about the impact on the public purse of the considerable time and expense taken up by investigating and responding to the complainant, who it states has repeatedly rejected the council's decisions and explanations, and has continued to challenge and escalate matters both directly with the council, and through external bodies. The council has also stated to the Commissioner that it is satisfied that officers have been excessively burdened by the complainant's correspondence relating to Mill View Primary School.
30. The council advised the Commissioner that due to the manner in which the complainant has interacted with the council over the last two years, it anticipates that answering these nine requests will take significant resources and is very likely to generate further enquiries or complaints. It has stated that whilst it considers that it would take some considerable time to respond to the requests that is not the sole basis for the refusal. The main basis for applying regulation 12(4)(b) is that the requests are unreasonably persistent and likely to cause an unjustified level of disruption and irritation to officers. It also considers that the requests are futile and pursuing them is an abuse of the right to access information. It is the council's view that the requests relate to a private dispute between the complainant and the school, and as such, the information is not in the wider public interest.
31. The council has further elaborated that it considers that the requests seek to reopen and revisit matters which have been thoroughly considered in the report and are directly linked to it. It therefore considers that pursuing these requests is an abuse of the rights of access to information. The council has highlighted that the complainant agreed to the scope of the investigation with the investigator and has had direct input in the investigation. The Commissioner notes that he had three meetings with the reviewer at the outset of the investigation in order to set out his issues and agree a scope. The council has advised that its focus is now on ensuring that the recommendations made in the report are taken forward.
32. The council states that the pattern of the complainant's contact since August 2014 suggests that he will not be satisfied with any response provided, and will make numerous follow-up requests and enquiries. It

argues therefore that to answer these requests will place excessive demands on its resources, which in turn would affect the day to day operations of the council employees involved in responding which would hinder the council's ability to deal with other information requests. In order to demonstrate this, the council explained that following the completion of the report, the complainant informed the Council Leader and Chief Executive that he considers the report to be 'fundamentally flawed'.

33. The council has explained that the complainant contacted the information governance senior manager on 17 March 2016 to request that his on hold requests be resumed because he had received confirmation that the report had been completed. The council points out that at this time he had not seen the report, which was not sent to him until 7 April 2016. The council states that this demonstrates the excessive demands and unjustified burden he places on the council.
34. In order to further demonstrate the burden on council staff, the council has advised that since the report, and in addition to recommencing the nine requests, the complainant has continued to engage with the council on matters relating to the school. He has made a subject access request, and subsequently challenged the accuracy of the information provided. He has made a new complaint about smoke nuisance from the school. He has also requested an update on the council's progress on implementing the recommendations of the report.
35. The council has stated that these requests will cause unjustified irritation to council employees and disruption to their work in requiring them to revisit, further amplify and justify previous responses. It argues that this must be considered on top of the time already spent in dealing with earlier requests, complaints and general correspondence.
36. The report considered the complainant's allegation that the council had not responded to all his correspondence. It considered this in the context of the voluminous and ongoing correspondence from the complainant and his representatives; and in light of his practice of sending emails, sometimes a number on the same day on the same subject, to multiple recipients. The council advised that as a result of the nature of these interactions, the complainant has been assigned a single point of contact in a bid to manage his correspondence and attempt to mitigate the impact on the council's resources.
37. The council also considers that some of the complainant's interactions have been conducted in a 'highly personalised' manner and it has provided a number of examples to demonstrate this. Firstly, a former legal officer at the council was referred to the Solicitors Regulatory Authority. Secondly, two requests for information seek the evidence on

which specific officers relied in making statements in relation to his complaints in order to challenge the quality or veracity of their submissions.

38. The council is also of the view that the complainant has expressed obvious dissatisfaction with the assistance provided by the council's records clerk in relation to missing planning files. It states that he has also made an unsubstantiated allegation of a fraudulent grant application by an individual connected with and later employed by the school. He has engaged in frequent correspondence to challenge council legal officers' interpretations of legal requirements regarding transfer of lands and assets to academies. Finally, the council has stated that the complainant has made unsubstantiated allegations of officers 'sanitising documents'.
39. The Commissioner notes that some of the requests being considered here are directly related to and challenge decisions made by other bodies. The request 3367932 relates to a previous decision notice (FER0585812) served by the Commissioner which found that specific historic planning information was not held. The Commissioner notes that the decision notice has been appealed, and the matter was also included in the scope of the report, despite the fact that the Commissioner's investigation was ongoing at the time the report commenced. In spite of this, the request asks for the evidence on which a specific officer relied in making a statement regarding the erroneous thinning out of a planning file.
40. The request 3368040 is for the evidence a specific officer relied on in making a statement to the Local Government Ombudsman. The Ombudsman determined that the complaint was closed after initial enquiries as it was outside of jurisdiction. In addition to this, the report also considered the complainant's concerns in this regard, but the complainant still decided to recommence this request. The Commissioner perceives that the complainant's handling of these two requests is demonstrative of his unreasonable persistence, and indicates the level of burden the requests and other interactions have on the council.
41. The Commissioner recognises, as acknowledged by the report and by the council, that the council has made some mistakes in dealing with the complainant, and particularly that there have been historic records management issues. However, she sees that the council has accepted these shortcomings and is actively taking steps to implement the report's recommendations.
42. The report states that it is clear that the complainant has a deep sense of injustice that matters relating to noise nuisance from the forest school

have not been resolved to his satisfaction. The Commissioner understands that the primary matter of the noise and other nuisance from the forest school remains of importance to the complainant. However, as demonstrated by the breadth of the scope of the report, and the content of these requests, these concerns have spiralled to encompass planning issues, records management concerns, the council's handling of his requests, and complaints and external investigations.

43. The council has concluded that taking into account all the above factors, it considers that dealing with the requests would not be a proportionate or justified course of action, and therefore it is appropriate to refuse the requests as manifestly unreasonable.
44. The Commissioner finds that the complainant's requests for information in this case are excessively burdensome on the council, and it is difficult to identify a wider public interest in the requested information. She is of the view that the requests and interactions with the council are about a personal matter which, despite the efforts of the council, the complainant will not accept as closed.
45. The independent report shows the lengths the council has gone to in an attempt to draw matters to a conclusion, but it is clear that the complainant had no intention of allowing this to bring matters to a close as he had contacted the council as soon as he heard the investigation was complete, before he had even viewed the report, to recommence these requests. The Commissioner has considered the report, and notes that many of the requests are directly covered by it. She has also considered the council's arguments and evidence which demonstrates that the requests are not justified or proportionate.
46. The Commissioner therefore finds that the council has correctly applied regulation 12(4)(b) to the requests.

Right of appeal

47. 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

48. 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.
49. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex

1. Request 7 July 2015 – Reference 3367849

"I hereby request, therefore, that the council should provide me with copies of all internal correspondence (i.e. council employee to council employee) exchanged in relation to conversion of Mill View Primary School to an Academy"

2. Request 17 August 2015 – Reference 3367041

"I refer to the 2014-15 pre-Audit Statement of Accounts and in particular the following section relating to the treatment of school assets. I have added to some paragraph breaks for clarity and my information requests are inserted in red bold text:

Treatment of School Assets

School education is provided via a range of different school models, some of which are in the Council's direct control, some under its influence and some fully independent. The degree of control the Council has over each school and the sites the schools operate from determine whether or not they are recorded in the Council's balance sheet as assets. The notes below summarise which types of school are recorded as Council assets and which are not.

On the Balance Sheet

• All Community Schools (82 schools, £180m value) are recorded on the Council's balance sheet as assets. All schools are within the Council's control and located on Council owned/controlled land. This includes all five schools which were built under the Private Finance Initiative.

PLEASE PROVIDE A SCHEDULE OF THESE 82 SCHOOLS AND THEIR INDIVIDUAL RESPECTIVE VALUES

• All Foundation Schools (5 schools, £54m value) are on the Council's balance sheet. Although these schools have greater independence the Council still has a significant degree of influence over the Governing Body. All the schools are on sites which are either in Council or Governing Body ownership.

PLEASE PROVIDE A SCHEDULE OF THESE 5 SCHOOLS AND THEIR INDIVIDUAL RESPECTIVE VALUES

• *Those Voluntary Aided and Voluntary Controlled Schools which are located on Council owned land, or where the Council has the ability to ensure the land remains in educational use, are shown on the balance sheet (5 Schools, £25m). While the schools again have a degree of independence and the linked religious body has significant independence the Council still has a significant control over the school and these sites.*

PLEASE PROVIDE A SCHEDULE OF THESE 5 SCHOOLS AND THEIR INDIVIDUAL RESPECTIVE VALUES

Off Balance Sheet

• *The majority of Voluntary Aided and Voluntary Controlled Schools are not located on land which is owned or controlled by the Council and are in the ownership of local diocesan body. These bodies allow the Council to utilise the school buildings under the terms of a license which does not transfer any rights over future usage of the sites. This means the Council does not have long term control over the sites and they do not meet the criteria to be recognised as a Council asset. There are 47 schools in this category at 31 March 2015, had the Council recognised these schools it is estimated they would have held a value of approximately £65m.*

PLEASE PROVIDE A SCHEDULE OF THESE 47 SCHOOLS AND THEIR INDIVIDUAL RESPECTIVE VALUES

• *Academy Schools are run independently of the Council but still provide education services in Cheshire West. The schools are typically located on land owned by the Council but the Academies have been given long leases over that land to give them security of tenure.*

The school buildings themselves are owned by the Academy.

PLEASE PROVIDE CLARIFICATION HERE. IT IS MY UNDERSTANDING THAT ACADEMIES DO NOT ACTUALLY NOW OWN THESE SCHOOL BUILDINGS. THAT ACADEMIES DO NOT ACTUALLY NOW OWN THESE SCHOOL BUILDINGS. I UNDERSTANDING THAT THE SCHOOL BUILDINGS AND LAND FREEHOLD TITLES ARE STILL ACTUALLY OWNED BY THE COUNCIL AND THE ACADEMIES HAVE ONLY BEEN GRANTED LONG TERM LEASE AGREEMENTS (NOT OWNERSHIP OF THE FREEHOLD TITLE). PLEASE CONFIRM THAT MY UNDERSTANDING IS CORRECT.

There are 19 Academies in the Borough as at 31 March 2015 with at least one more scheduled to transfer in 2015-16. These Academies replace 21 former schools which were last valued at approximately £96m.

PLEASE PROVIDE A SCHEDULE OF THESE 21 SCHOOLS AND THEIR INDIVIDUAL RESPECTIVE VALUES

The additional conversion anticipated to take place in 2015-16 would result in a further £1.8m of existing assets being derecognised from the Council's accounts.

PLEASE CONFIRM THE IDENTITY OF THIS SCHOOL "

3. Request 21 August 2015 – Reference 3367932

"In his internal email of 30th July 2015 (12:36pm) to Dan Dickinson, Dan Nickson states the following:

"Your question regarding the back scanning process has jogged something in my memory. Chester City Council held all historic records between 1948 and 1996 in storage with the company Iron Mountain, and when we were carrying out the back scanning project in 2010 we requested all boxes from Iron Mountain. Files between 1974 and 1996 were sent for scanning and all other boxes of files between 1948 and 1974 were sent back to the council for storage. The reason for this is that we have an electronic record of all applications from 1974 so we would not be able to attach pre 1974 documents to a record, and also the volume of requests for documents between 1948 and 1974 meant that it was not financially viable to have these documents scanned when they are usually easily available upon request from our storage depot. Unfortunately when Iron Mountain were providing the boxes for scanning they also included two boxes which were not to be sent for scanning and one of these boxes contained 2/3/4710. [my emphasis]"

I hereby request copies of any and all information that Mr Nickson has relied upon in making his above declaration that archive box PP3652 was erroneously sent for scanning, thinning and destruction at some time between 2010-2012.

If there is no information to support the above declaration, and given that there is documentary evidence that confirms that the above declaration is factually incorrect, I would request that evidence that confirms that the above declaration is factually incorrect, I would request that Mr Nickson should confirm the grounds upon which he has made this declaration."

4. Request 21 August 2015 – Reference 3368040

"I hereby request copies of any and all information (including the formal council procedures for record management) that Ms Wallace has relied upon in providing the above declaration to the Local Government Ombudsman. If Ms Wallace has not relied upon documented

procedures, I would request that Ms Wallace should confirm whose advice she relied upon when making her declaration to the Local Government Ombudsman."

5. Request 21 August 2015 – Reference 3368092

"I request electronic copies of the full contents of planning files 2/3/725, 2/3/4061 and 2/3/4762."

6. Request 25 August 2015 – Reference 3368116

"1. Copies of, or access to, the plotting sheets for the former Vale Royal Area (would not have been called this pre-1974) which are available as a layer on your corporate GIS system.

2. Access to the 49 ledgers and books which cover the former Chester City area and former Vale Royal area.

3. Confirmation of where the original pre-1974 planning files for the former Vale Royal area are located.

4. Confirmation that the original pre-1974 planning files for the former Vale Royal area can be retrieved from storage upon request and made available for inspection."

7. Request 5 September 2015 – Reference 3368140

"I refer to the attached title deed document which refers to "a price to be agreed or failing agreement to be settled by arbitration in accordance with the Land Compensation Act 1961 and the Lands Tribunal Act 1949...."

The contents of the deed packet 2983 which have been provided to me do not appear to contain any records relating to, or confirming, the aforementioned agreed price.

Please, therefore, provide me with any and all information that relates to the price agreed (between Thomas Warrington and Sons Ltd and Cheshire County Council) for the compulsory purchase of this land. This information should include the manner in, and monetary value of, which both parties valued the land in question. This information should also confirm whether the price was settled by arbitration and, if it was, all papers of the arbitration (including the case reference number).

I also refer to the attached site plan titled "MillViewSchoolAgreementforSale.pdf" which has also been sent to me as part of deed packet 2983. The drawing itself is titled "Proposed One Form Entry County Primary School'.

It is the significant that this plan indicates that the proposed school site is restricted a hatched area of 3.2 acres within the total land area of 5.6 acres that was subject to a compulsory purchase by the council. It seems that no other detail is included in the deed packet in relation to this specific 3.2 acre area. Please, therefore, provide any and all information held by the council that relates to and / or provides confirmation of the purpose of the 3.2 acre hatched red council that relates to and / or provides confirmation of the purpose of the 3.2 acre hatched red area particularly in the context of (but not restricted to) the compulsory purchase of this land and subsequent development of this site."

8. Request 18 September 2015 – Reference 3400843

I am writing to request the following information:

- *Any and all information held by the Council, under the internal reference LS/MCE/24/030/32477/201, in relation to the land owned by the Council at Wealstone Lane, Chester.*

I understand that full details of the land registration (including the original purchase price and information relating to the original purchase valuation of the land) are held by the Council under the above reference number.

Please can you provide this information in electronic format.

9. Request 21 September 2015 – Reference 3400953

"I hereby request the following environmental information:

- 1. Copies of contractual agreements between Cheshire Academies Trust and Cheshire West and Chester Council in relation to any support or services that have been bought back from the Council.*
- 2. Copies of any structural inspection or safety reports that have been provided to Mill View Primary School and / or Cheshire Academies Trust by Cheshire West and Chester Council.*
- 3. Any information that confirms whether or not the Health and Safety Advisory Service is appointed to carry out building inspections (at Mill View Primary School) on behalf of Cheshire Academies Trust."*