

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 5 December 2016

Public Authority: Hampshire County Council
Address: The Castle
Winchester
Hampshire
SO23 8JU

Decision (including any steps ordered)

1. The complainant has made three requests to Hampshire County Council ("the Council") for information about a recreational trail called the 'Meon Valley Trail' ("the MVT"). The Council refused the requests under regulation 12(4)(b) of the Environmental Information Regulations ("the EIR").
2. The Commissioner's decision is that the Council has correctly applied regulation 12(4)(b) to the requests.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 22 June 2015 the complainant requested:

Please send me copies of emails between Hampshire County Council's press/media department to and from Hampshire County Council's Countryside Department from March 1st 2015 to date concerning the Meon Valley Trail.

Please send me copies of emails between Hampshire County Council's press/media department to and from Cllr [redacted name] from March 1st 2015 to date concerning the Meon Valley Trail.

Please send me copies of emails between Hampshire County Council's Countryside Department to and from Cllr [redacted name] from March 1st 2015 to date concerning the Meon Valley Trail.

This was considered by the Council under reference 9367. On 23 July 2015 the complainant provided a further copy of this request. This was mistakenly accepted as a new request and given an additional reference of 9513.

5. On 6 July 2015 the complainant further requested:

Developing and Promoting the Meon Valley Trail" which was commissioned by Hampshire County Council. Please provide the following information:

- 1) Emails between HCC staff and Walk England/ Walk Unlimited Ltd concerning this report including, but not limited to, its commissioning, writing and terms of reference.*
- 2) Details of any people or organisations who were invited to take part in the survey / report.*
- 3) Any emails between Walk England/ Walk Unlimited Ltd concerning this report received or sent in 2015.*
- 4) A copy of the invoice / cost of this report (NOTE: No record can be found here:*
<http://www3.hants.gov.uk/opendata/datasets/supplierpayments>*).*

This was considered by the Council under reference 9425.

6. On 6 July 2015 the complainant further requested:

Please provide copies of emails and letters received by Councillor [redacted name and email address] in June and July 2015 concerning the Meon Valley Trail (MVT) and please provide copies of his responses.

This was considered by the Council under reference 9426.

7. On 24 July 2015 the Council responded. It refused the three requests under the exception provided by regulation 12(4)(b).
8. The complainant requested an internal review on 27 July 2015.
9. The Council provided the outcome of its internal review on 11 August 2015. It maintained its position.

Scope of the case

10. The Commissioner has previously considered (in decision notice FER0593198) an earlier request that was made by the complainant on 5 June 2015. The Council refused that request under regulation 12(4)(b) on 24 July 2015, at which time the Council also refused (on the same basis) the later three requests under consideration here.
11. The Commissioner found in FER0593198 that the Council had incorrectly refused the earlier request of 5 June 2015, and therefore ordered the Council to provide a response that did not rely upon regulation 12(4)(b).
12. Following the Commissioner's decision, the complainant asked the Council, on 10 May 2016, to reconsider its refusal of the later three requests.
13. The Council subsequently informed the complainant, on 23 June 2016, that it maintained its refusal of these later three requests under regulation 12(4)(b).
14. The complainant contacted the Commissioner on 11 July 2016 to contest the Council's continued refusal of the three requests. The Commissioner considers the scope of this case to be the determination of whether the Council is entitled to refuse the requests under the exception provided by regulation 12(4)(b).

Reasons for decision

Is the information environmental?

15. Information is "environmental" if it meets the definition set out in regulation 2 of the EIR. Environmental information must be considered for disclosure under the terms of the EIR rather than the Freedom of Information Act ("the FOIA"). Under regulation 2(1)(c), any information on activities affecting or likely to affect the elements of the environment listed in regulation 2(1)(a) will be environmental information. The requested information relates to the development of a recreational trail. This can be clearly identified as affecting the land. The Commissioner therefore considers that the request should be dealt with under the EIR.

Regulation 12(4)(b) – manifestly unreasonable requests

16. Regulation 12(4)(b) states that:

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;

17. The Commissioner recognises that, on occasion, there can be no material difference between a request that is vexatious under section 14(1) of the FOIA and a request that is manifestly unreasonable on vexatious grounds under the EIR. The Commissioner has therefore considered the extent to which the request could be considered as vexatious.
18. The Commissioner has published specific guidance on vexatious requests¹. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. Sometimes, it will be obvious when requests are vexatious, but sometimes it may not. In such cases, it should be considered whether the request would be likely to cause a disproportionate or unjustified level of disruption, irritation or distress to the public authority. This negative impact must then be considered against the purpose and public value of the request. A public authority can also consider the context of the request and the history of its relationship with the requester when this is relevant.
19. While section 14(1) of the FOIA effectively removes the duty to comply with a request, regulation 12(4)(b) of the EIR only provides an exception. As such the EIR explicitly requires a public authority to apply a public interest test (in accordance with regulation 12(1)(b)) before deciding whether to maintain the exception. The Commissioner accepts that public interest factors, such as proportionality and the value of the request, will have already been considered by a public authority in deciding whether to engage the exception, and that a public authority is likely to be able to 'carry through' the relevant considerations into the public interest test. However, regulation 12(2) of the EIR specifically states that a public authority must apply a presumption in favour of disclosure. In effect, this means that the exception can only be maintained if the public interest in refusing the request outweighs the public interest in responding.

The context of the requests

20. The requests relate to changes made to the MVT; a recreational trail managed by the Council. These changes have been opposed by a group

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

called the 'Meon Valley Railway Line Users Group' ("the Group"), of which the complainant is a member.

21. Further detail about this context can be found in FER05936198.

The Council's position

The purpose and value of the requests

22. The Council has asked the Commissioner to refer to its earlier submissions made for FER05936198, as the circumstances of that decision remain partly relevant to these three requests.
23. The complainant believes that the changes to the MVT were undertaken without proper public consultation, and that these changes are unlawful due to the Council not seeking planning permission. However the Council's position is that no planning permission was required, and that some public consultation was still undertaken despite there being no statutory obligation to do this. This position is still maintained by the Council, which has informed the Commissioner that a related complaint to the Local Government Ombudsman is currently in progress.

The burden placed on the Council

24. The Council considers that as of the time of the first request (22 June 2015) the actions of the complainant and the wider campaign Group had placed significant burden upon the Council. In particular, two preceding requests were made by another member of the Group on 11 June 2015 and 15 June 2015, which were partly fulfilled.
25. The complainant's request of 22 June 2015 represents a 'blanket request' and would require the Council to collate emails from a number of different officers in two different departments, in addition to the named Councillor. The following two requests likewise seek a wide variety of related information, and were submitted in quick order (each within the statutory time for response of the previous request). The Council considers that by making such blanket requests the complainant is utilising the rights provided by the EIR to 'fish' for information rather than make targeted requests that serve a clear public interest.

The complainant's position

26. The complainant has likewise asked the Commissioner to refer to his earlier submissions made for FER05936198.
27. As the Commissioner identified in FER0593198, it is evident that the complainant, and Group that he is part of, has concerns about the legality of the work undertaken on the MVT, and has taken independent

legal advice about this. The Commissioner is also aware that there is local public concern about the suitability of the changes made to the MVT.

The Commissioner's analysis

28. Firstly, the Commissioner would like to highlight that there are many different reasons why a request may be vexatious, as reflected in the Commissioner's guidance. There are no prescriptive 'rules', although there are generally typical characteristics and circumstances that assist in making a judgement about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed as vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates them. A commonly identified feature of vexatious requests is that they can emanate from some sense of grievance or alleged wrong-doing on the part of the authority.
29. The Commissioner's guidance has emphasised that proportionality is the key consideration for a public authority when deciding whether to refuse a request as vexatious. The public authority must essentially consider whether the value of a request outweighs the impact that the request would have on the public authority's resources in providing it. Aspects that can be considered in relation to this include the purpose and value of the information requested, and the burden upon the public authority's resources.

The purpose and value of the requests

30. The Commissioner has referred to FER0593198 in considering the purpose and value of the requests, as the context to that decision remains partly relevant. However, it must also be considered that the request considered in FER0593198 sought specific information known to exist, and which could feasibly allow a greater public understanding of the Council's actions. In this decision the three requests are wider in scope and seek all information related to the substantive matter, regardless of content or ability to advance public understanding.
31. The Commissioner recognises that the substantive matter remains a subject of local public concern, and this appears to be evidenced through the public meetings and other activities undertaken by the Council itself. It is also noted that the complainant's, and Group's, actions appear to be based in genuine concerns about the appropriateness and legality of work undertaken on the MVT.
32. However, the Commissioner recognises that any dispute about the work undertaken by the Council would need to be considered by either the

Courts or the relevant public authority with jurisdiction to do so, and it is understood that a complaint to the Local Government Ombudsman is currently in progress. Although the submission of wide 'blanket' requests for information may potentially increase public knowledge of the substantive matter, it is not clear how these would formally resolve the concerns held by the complainant, the Group, or the wider public.

The burden on the Council

33. In the circumstances of this case the Commissioner recognises that the three requests have been made in succession across a short span of time (24 working days). Each request is also significantly wide in scope, and would require the Council to undertake broad searches for information across multiple departments and individuals before considering whether any specific exceptions may be applicable; this is particularly so in that the requests seek email correspondence that is likely to contain personal data.
34. In FER0593198 the Commissioner noted that the Council is a county authority, and as such must accept a level of burden that corresponds to its size and resources. However it is noted in this case that compliance with the three requests would cause a significant diversion of public resources.

The public interest test

35. Regulation 12(1)(b) provides that:

...a public authority may refuse to disclose environmental information requested if-
(b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

36. In the circumstances of this case, the Commissioner notes that whilst the Council has not clearly defined how it has undertaken a public interest test, it is clear that it has considered public interest factors as part of its decision to apply the exception. Notwithstanding this, the Commissioner will re-consider the public interest test as part of this decision.
37. The Commissioner recognizes that the requests relate to concerns held by the complainant, the Group that he is part of, and other local residents who use the MVT. In particular, it is noted that there are concerns about the appropriateness of changes to the MVT, and whether these changes should have been subject to planning permission. The Commissioner considers that there is strong public interest in ensuring

that actions undertaken by the Council are environmentally appropriate and abide by planning laws.

38. However there is no clear evidence to suggest that the Council has acted incorrectly, and it is evident that there are mechanisms by which the Council's actions can be appealed should a party wish to do this. The Commissioner also considers that even should these three requests be complied with, it is difficult to see how this would immediately resolve any public concerns and allow the matter to be concluded. It is also noted that compliance with the requests would consume finite public resources, and impact on the Council's ability to comply with other requests made by the public.

Conclusion

39. Having considered these factors, the Commissioner has concluded that regulation 12(4)(b) has been correctly engaged and that the outcome of the public interest test indicates the exception should be maintained.

Right of appeal

40. 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

41. 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.
42. 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