

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

**Decision notice**

**Date:** 9 May 2016

**Public Authority:** London Borough of Hillingdon  
**Address:** Civic Centre  
High Street  
Uxbridge  
Middlesex  
UB8 1UW

**Decision (including any steps ordered)**

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1. The complainant has requested information from the London Borough of Hillingdon ("the Council") broadly relating to planning applications.
2. The Commissioner's decision is that the Council has correctly applied section 14(1) to the information that falls under the FOIA and regulation 12(4)(b) to the information that falls under the EIR.
3. The Commissioner requires the Council to take no steps.

**Request and response**

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4. The complainant wrote to the Council and made six requests for information. These requests are set out in annex A.
5. The Council responded to the requests and cited section 14 of the FOIA and regulation 12(4)(b) of the EIR. This position was maintained at internal review.

**Scope of the case**

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6. The complainant contacted the Commissioner on 17 January 2016 to complain about the way his request for information had been handled.

7. Specifically he disputed the Council's application of section 14 and regulation 12(4)(b) to the requests.
8. The Commissioner has had to consider whether the Council has correctly applied section 14 and regulation 12(4)(b) to the requests.

## Reasons for decision

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### Does the request fall under the FOIA or the EIR?

9. Regulation 2(1) of the EIR defines what 'environmental information' consists of. The relevant part of the definition are found in 2(1)(a) to (c) which state that it is any information in any material form on

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

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

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

10. The Commissioner's approach is to interpret "*any information...on*" fairly widely. He does not consider it necessary for the requested information itself to have a direct effect on the environment in order for it to be environmental information. It will usually include information concerning, about, or relating to measures, activities and factors likely to affect the state of the elements of the environment.
11. Having considered the nature and context of the requests, the Commissioner is satisfied that some of the requested information would fall under the EIR. For example, the complainant's request for "*Please provide details of the documentation\notes\minutes or discussions that [reacted information] relies on to confirm "that a decision was taken to refuse planning permission". For the avoidance of doubt this should include both prior and post decision material*" is a measure set out in (c) that is likely to affect the elements and factors set out in (a) and (b).

12. The Commissioner is also satisfied that some of the requested information would fall under the FOIA. For example in one of the complainant's requests, he sought the following information: *"Please provide details of how correspondence to [redacted name] is automatically sorted and distributed to the relevant case officer or manager, as mentioned in [redacted name] reply to my stage 2 complaint.* The Commissioner is satisfied that any information held by the Council falling within the scope of this request would be captured by the FOIA.
13. Bearing in mind that the information sought falls under both the FOIA and the EIR, the Commissioner will first consider the Council's application of section 14 of the FOIA. He will then go on to consider the Council's application of regulation 12(4)(b) of the EIR.

### **Section 14 of the FOIA – vexatious requests**

14. Section 14(1) states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
15. The term "vexatious" is not defined in the FOIA. The Upper Tribunal (information Rights) considered in some detail the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*<sup>1</sup>. The Tribunal commented that vexatious could be defined as the *"manifestly unjustified, inappropriate or improper use of a formal procedure"*. The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
16. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public authority and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request and (4) harassment or distress of and to staff.
17. The Upper Tribunal did however also caution that these considerations were not meant to be exhaustive. Rather, it stressed the:  
  
*"importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and,*

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<sup>1</sup> GIA/3037/2011

*especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests” (paragraph 45).*

18. In the Commissioner's view the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
19. The Commissioner has identified a number of “indicators” which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests.<sup>2</sup> The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.

#### *The Council's position*

20. The Council provided the Commissioner with some background to the request. It explained that the requests relate to an issue that has been running since 2012 when a planning application was refused. The applicant proceeded to redevelop his property without the benefit of planning permission which subsequently led to the Council issuing a planning enforcement notice. The applicant appealed to the Planning Inspectorate who refused his appeal against both the enforcement notice and the application for retrospective planning permission. The applicant was subsequently prosecuted for breach of the planning enforcement notice.
21. The applicant raised a complaint via the Council's internal three stage complaint process. A further complaint was made to the Local Government Ombudsmen. The Local Government Ombudsmen dismissed the complaint in its entirety and found no fault in the Council's handling of the matter.
22. In its view, the Council believed that the six requests are a clear attempt to re-open a complaint that has been comprehensively considered by the Council's internal complaints process, the Local Government Ombudsmen and the Planning inspectorate.

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[http://ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/dealing-with-vexatious-requests.ashx](http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx)

23. The Council considered that the crux of the issue is the Council's initial refusal of the planning application. The Council considers that the applicant was clearly at fault by proceeding with the development without the benefit of planning permission. The Council explained that if the applicant believed that the application had been refused incorrectly, he should have appealed to the Planning Inspectorate prior to the undertaking of the development.
24. The Council argued:

*"Given that both the LGO and the Planning Inspectorate have categorically rejected his complaints and that each of these 6 requests either asks rhetorical questions, or are directly related to the minutia of the decision process, or are seeking to unpick responses provided during the complaints process these requests are clearly an attempt to reopen an issue which has been dealt with by the appropriate regulatory bodies and are therefore lacking in any serious merit purpose or value and are clearly manifestly unreasonable. In addition to this the applicants conduct can clearly be categorised as obsessive. This is a chain of events he set in motion himself by not seeking to appeal the refusal of planning permission or submitting a revised application prior to commencing work".*
25. The Council also argued that Council officers have already spent a disproportionate amount of time over the last 3-4 years on dealing with this matter and associated complaints, correspondence and FOI requests and it would involve a similar disproportionate effort to respond to the further requests that are subject to this decision notice.
26. In its view, the Council considered that responding to the requests would divert members of staff from their day to day functions and divert vital staff time from dealing with other matters. Specifically, the Council considered that *"to answer these requests would divert members of staff from their day to day functions and divert vital staff time from dealing with current workloads and would mean that other residents and services users are not getting the staff time on their cases"*.
27. In addition to this, the Council argued that the six requests were timed in such a manner spread over a period of two weeks so as to cause maximum disruption and damage. The Council confirmed that the six requests were received within a short space of time and each in its own right would involve a significant amount of office time to respond to.
28. The Council advised the Commissioner that it has dealt with 10 previous information requests which were largely repetitive and dealt with the same issue. The Council provided the Commissioner with an example of this. It explained that in the complainant's request of 4 November 2015,

he sought *"a copy of the Junior Officers Assessment referred to in this statement"*. The Council explained that the complainant has previously made this request in 2013 and the Council has previously informed him that the information is not held.

29. In its view, the Council argued that the complaint holds a personal grudge against a Council Officer. It further argued that the complainant is making unfounded allegations and using unreasonable persistence.

30. To support this view, the Council explained:

*"At the heart of this matter is the applicant's belief that the Head of Planning has a personal vendetta against the applicant and personally intervened to ensure that his planning application was refused. For the avoidance of doubt this is incorrect and the Head of Planning had no role in the decision"*.

31. The Council referred to a photo as evidence of this. The photo contains a sign which was put up outside the complainant's house in which he says that the Head of Planning *"tried to compulsory purchase my office building but failed!!! Then overrode/refused this planning application."*

32. The Council advised the Commissioner that the complainant has sought to obtain evidence of the Head of Planning's involvement via the FOIA and the Council has responded to these requests and confirmed that the information he seeks is not held. The Council reiterated its position that the information was not held because the Head of Planning had no involvement with the decision. However the Council explained its view that the complainant believes that all Council Officers are involved in the 'cover up'. The Council referred to a comment made by the complainant where he states:

*"..it seems you are in denial and will not fully investigate my complaint, probably because of the potential serious consequences for the Council Officers involved. There seems to be cover up by Hillingdon Council by not fully investigating the wrong doing of their Officers and by your own actions, you are complicit in this cover up and when the full facts of this are finally revealed, you will be held solely responsible for your actions"*.

33. At this stage, the Council reiterated the fact that the complainant had complained to the Local Government Ombudsman who did not uphold the complaint.

34. The Council argued:

*"Whilst employees of a public authority we expect a certain degree of scrutiny in our work and accept that at times we have to make*



*decisions which make us unpopular – however we should not have to accept false allegations been repeatedly made and furthered through a misuse of Freedom of Information legislation. It is cases of this nature which bring the FOI regime into disrepute as officers are forced to perpetuate false allegations by continually responding to requests of this nature”.*

*The complainant's arguments*

35. The complainant explained that the handling of his planning application was investigated by the Local Government Ombudsman who found that the Council did not do anything wrong. However, he argued that the Ombudsman has stated that they will reopen the case if new information is provided. The complainant therefore explained that the information he was seeking was essential information to put before the Ombudsman.

*The Commissioner's view*

36. 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.
37. The Commissioner has reviewed some evidence provided by the Council to support its position that the requests are vexatious. The correspondence relates to a chain of emails sent between the complainant and the Council in which the complainant wishes to raise a new complaint regarding the officers involved in his planning application refusal. The Council refuses to accept the complaint on the basis that the matter has already been addressed as part of a previous complaint. The Council believed that this was an attempt by the complainant to reopen matters that have already been investigated and closed. The Commissioner agrees with the Council and considers that this is a clear attempt to reopen an issue that has been investigated and closed by the Council and the Local Government Ombudsman.
38. The Commissioner notes the complainant's argument made at paragraph 35. However it is not clear why some of the requested information would be needed by the Local Government Ombudsman. For example, in his request dated 11 November 2015, the complainant asks

for information relating to why his letter was passed from one individual to another. He also seeks information relating to who instructed a specific individual to respond to his letter. In a further request, the complainant seeks information relating to the Council's planning procedure when dealing with planning application such as how the Council records details of a new planning application, how a case officer is appointed and how a manager is appointed to oversee a case officer. It does not appear that this information would help the complainant pursue a complaint with the Local Government Ombudsman.

39. The Commissioner is aware that the issue between the Council and the complainant has been running since 2012. During this period the complainant has exhausted the Council's internal complaint procedure and made additional complaints to third party organisations, all of which have not upheld the complaint.
40. The Commissioner does not accept that compliance with the six requests would resolve the matter. If anything, he considers that complying with the requests may result in further correspondence and requests relating to the same issue.
41. The Commissioner therefore considers that the Council was correct to apply section 14 to refuse to comply with the requests that fall under the FOIA.

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

42. The Council relied upon the same arguments as set out in paragraphs 20-34 to refuse the request under regulation 12(4)(b).
43. Having considered the arguments presented by the Council and the decision detailed by the Commissioner in paragraphs 36 - 41, he has determined that regulation 12(4)(b) is engaged.
44. The EIR explicitly requires a public authority to apply a public interest test, in accordance with regulation 12(1)(b), before deciding whether an exception should be maintained. 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 these arguments will still be relevant considerations in the public interest test.
45. The Commissioner appreciates that the complainant has a personal interest in the information he has requested. However the Commissioner does not believe that the information that has been requested is of interest to the wider public and therefore it lacks public interest. He further considers that it is not in the public interest for Council Officers to divert their time from other activities to respond to information



requests which relates to an issue that has been investigated by the Council and other third parties and closed.

46. The Commissioner is therefore satisfied that the public interest favours maintaining the exception.
47. The Commissioner requires the Council to take no steps

## Right of appeal

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48. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

49. 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.
50. 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** .....

**Rachael Cragg**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**