

## Environmental Information Regulations 2004 (EIR)

### Decision notice

**Date:** 13 September 2017

**Public Authority:** Sedgemoor District Council  
**Address:** Bridgwater House  
King Square  
Bridgwater  
Somerset  
TA6 3AR

#### Decision (including any steps ordered)

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1. The complainant requested correspondence relating to a planning application. Sedgemoor District Council (the Council) refused the request under section 14(1) of the Freedom of Information Act 2000 (the Act) as it was vexatious.
2. The Commissioner's decision is that the request is vexatious. However, she finds that the Council should have refused the request under regulation 12(4)(b) of the EIR instead of section 14(1) of the Act, as the request was for environmental information. The Commissioner finds that the balance of the public interest test favours maintaining the exception.
3. The Commissioner does not require any steps to be taken for the Council to be compliant with the relevant legislation.

#### Request and response

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4. On 3 April 2017 the complainant made the following request for information under the Act for:

*"Invoking the provisions of the above captioned legislation please confirm or deny whether the Council has any information (as defined) regarding correspondence of any kind (including for the avoidance of doubt electronic correspondence and records of conversations) from or to any member of the Planning Committee from or to the Committee clerk, other council officer or chair of that committee determining*

*Planning application 15/15/00007 (or the preceding PCN) and if so please supply all records.*

*I do not consider this vexatious: I do consider the Council's failure to reply to an earlier FOIA request which took over 4 months to elicit a reply and consequently had a detrimental effect on my ability to make effective representation to this committee shall we say extremely unhelpful."*

5. The Council responded on 28 April 2017. It refused the request under section 14(1) of the Act as it considered it to be vexatious.
6. The Council carried out an internal review on 24 May 2017. This upheld its refusal of the request under section 14(1) of the Act.

### **Is the request for environmental information?**

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7. Environmental information is defined at regulation 2 of the EIR. The relevant section for this decision is as follows:

*"environmental information" has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on –*

*(a) the state of the elements of the environment, such as air and atmosphere, water, 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;*

*...*

*(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;"*

8. The complainant requested correspondence relating to a planning application. The Commissioner considers planning applications to be plans that affect the land, and thus meets the definition for environmental information at regulation 2(1)(c).

## Scope of the case

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9. The complainant contacted the Commissioner on 6 February 2017 to complain about the way his request for information had been handled. The Commissioner required further documentation from the complainant, so the appeal was eventually accepted on 13 June 2017.
10. The Commissioner considers the scope of the case to be whether the request can be refused as vexatious. As the Commissioner considers the request is for environmental information she considers that this is a refusal under regulation 12(4)(b) of the EIR rather than section 14(1) of the Act as applied by the Council. As the Commissioner is basing her decision on regulation 12(4)(b) she will need to consider the balance of the public interest for the request.

## Background to case

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11. The planning application named in the request refers to a farm which sought the removal of a condition so that it was permitted to rear pigs. The application was granted permission on 30 June 2015.
12. The complainant has been trying to sell his property, which is nearby. He objected to the planning application and remains opposed to the condition being removed as it will adversely affect the sale of his property.

## Reasons for decision

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13. Regulation 12(1) of the EIR states that:

*"12.—(1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if –*

*(a) an exception to disclosure applies under paragraphs (4) or (5);  
and*

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

14. Regulation 12(4)(b) of the EIR states:

*"(4) 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; "*

15. Regulation 12(4)(b) allows public authorities to refuse requests where dealing with a request would create unreasonable costs or an unreasonable diversion of resources, or an equivalent request would be found 'vexatious' if it was subject to the Act. The Council confirmed to the Commissioner that the refusal of the complainant's request was because it considered it to be vexatious.
16. The Commissioner has issued guidance on determining whether a request is vexatious.<sup>1</sup> This guidance explains that the purpose of section 14(1) of the Act is to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress. It was confirmed in the Upper Tribunal case of *Craven v The Information Commissioner and the Department of Energy and Climate Change [2012] UKUT442 (AAC)* that the same approach can be taken to refusals under regulation 12(4)(b) for requests a public authority consider to be vexatious.
17. In order to determine whether the Council is entitled to refuse the complainant's request as manifestly unreasonable she will decide whether the request is vexatious as per her guidance. If the Commissioner decides the request is vexatious she will determine whether the balance of the public interest supports maintaining the exception.
18. In reaching her decision the Commissioner has considered the balance of the public interest test from when the Council issued its internal review, which was 24 May 2017. This reflects the position taken by the Upper Tribunal in *APPGER v ICO and Foreign and Commonwealth Office (UKUT 0377 (ACC), 2 July 2015)*. This judgment concluded that 'the public interest should be assessed by reference to the circumstances at or around the time when the request was considered by the public authority (including the time of any internal review)'.<sup>2</sup>

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

<sup>2</sup>

<http://administrativeappeals.decisions.tribunals.gov.uk//judgmentfiles/j4597/%5B2016%5D%20AACR%205ws.doc> see paragraph 44

### *Complainant's arguments*

19. On 4 June 2015 the complainant made a request for information, he argued that there was a delay in handling one of his requests, and it took four months for him to obtain a response. He claims that the information he eventually obtained would have assisted "in some way" with his objections to the planning application.
20. The complainant has raised a number of other concerns regarding the handling of his requests both by the Council and the parish council where the planning application was based. He alleges there are numerous instances of poor information rights practices. As a result he has felt compelled to raise a number of complaints to the Local Government Ombudsman (LGO). One of these complaints was made under the Equality Act 2010 as the complainant considers that the Council did not make reasonable adjustments for him.

### *Council's arguments*

21. The Council argued that the complainant's request related to a matter that had been resolved. The application was decided some time ago and the time for an appeal had passed by the time the request was made.<sup>3</sup> The Council's view is that the complainant is being unreasonably persistent in pursuing a matter that he is aware cannot be meaningfully addressed again, which represents an inappropriate use of the formal rights afforded to the complainant.
22. In addition, the Council stated that the four complaints to the LGO - including that relating to the Equality Act 2010 - were unsuccessful. The complainant also submitted complaints about ten councillors. The Council considers that its conduct in this planning application has been looked at by the appropriate body and found that it had not been guilty of maladministration. This is further evidence that the planning matter had been addressed and that the complainant was using freedom of information requests to revisit a closed matter.
23. The Council explained that in addition to requests under the Act and EIR, it had also been involved in lengthy correspondence with the complainant in relation to the planning application. This correspondence involved members of the Planning Department, Environmental Services Department, Democratic Services, the Chief Executive's Office, as well

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<sup>3</sup> An application for judicial review must be made within six weeks of the decision, which would have been August 2015 -

<http://www.legislation.gov.uk/ukpga/1990/8/section/288>

as the Monitoring Officer. The Council considers this demonstrates the burden on its resources in relation to this planning matter, and provides evidence that the context in which the request was made makes it vexatious.

24. The Council views the complainant's request as a 'fishing expedition', which is where a requester casts their net widely in the hope that this will catch information that is noteworthy or otherwise useful to them. The complainant had previously asked for similar information and has now submitted a request for "all" correspondence rather than describe specific information. The Council considers that given the context the request was made in this open scope was designed to obtain any information which would permit the complainant to revisit the resolved planning decision.
25. Following four requests relating to the planning application the complainant began to make requests about the working history and qualifications of the individuals involved in the planning application, including the council's independent person. He also made a request for complaints made against named members of staff, including complaints made to the Council, to the LGO, and any judicial reviews. The complainant's dissatisfaction with the planning application led him to challenge the Council on whether its staff was capable of carrying out their duties.
26. The Council also warned the complainant that due to the number of requests he was submitting relating to a resolved planning application it would consider refusing further requests as vexatious. The Council considers the complainant's decision to ignore this warning as evidence that he is being unreasonably persistent in relation to a matter that the Council has previously addressed.

*Commissioner's decision on vexatious*

27. The Council did respond to one of the complainant's requests four months after it was received, which is far in excess of the statutory limits. The request was for details of prosecutions for statutory nuisance in the district in the previous five years. However, the Commissioner is not of the view that the complainant's representations were prejudiced as a result of this delay. The complainant stated that the information would assist "in some way" but it is not clear how knowing the number of statutory nuisance prosecutions would have been pivotal to ensuring that the planning condition remained. That the Council provided this information late was a breach of the EIR but it is not seen as a grievance that would justify a lengthy campaign of complaints.
28. As is evident from the wording of the request the complainant does not consider that his request can be vexatious due to the Council's failure to

respond to his request of 4 June 2015 promptly. The Commissioner disagrees, a requester is not permitted to make as many requests as they like purely because at some point a public authority failed to comply with its obligations under the EIR.

29. The Commissioner considers that the main argument that supports the view that the request is vexatious is that the planning decision has been made, and the time to have the decision judicially reviewed had passed at the time of the request. It is not clear what benefit the complainant could possibly gain from revisiting the matter, and his correspondence to the Commissioner is mostly concerned with the supposed failings of the Council and other bodies in the planning decision process. Much of what was included – as the complainant stated himself to the Commissioner – was not germane to the Commissioner's functions. This casts serious doubt about the value of the request, and in the Commissioner's view the request was not one which can be considered reasonable.
30. Further, it is evident that the complainant has already tried to revisit the planning decision in a number of ways, with complaints through the Council's own procedures against its councillors, and to the LGO. All of these have been unsuccessful. The complainant made several requests relating to the planning application after the time for judicial review had passed, and the Council provided its responses to them. At a point, the Council explained that it would consider refusing the complainant's requests on this matter as vexatious, and the complainant pursued the matter regardless. The Commissioner considers this is evidence that the complainant has been unreasonably persistent in his approach.
31. The Commissioner has also taken into consideration the burden on the Council's resources caused by the requests, the complaints, and the other correspondence that all stems from the complainant's concerns about the planning decision. The Council has already expended a great deal of time and effort on this matter and for it to commit further resources at this time is seen as an unjustified disruption.
32. The Commissioner's decision is that the request is manifestly unreasonable as it is vexatious, which means that regulation 12(4)(b) is engaged. In order to determine whether the request can be refused the Commissioner will now consider the balance of the public interest.

#### *Arguments in favour of disclosure*

33. The complainant has a number of concerns about the way the planning application was handled, and it is feasible that the requested information would provide him with a greater understanding of what occurred and whether there were any instances of maladministration. There is an

inherent argument for transparency and accountability in public authority decisions and disclosure would work towards that argument.

*Arguments in favour of maintaining the exception*

34. The Commissioner considers that there is a very strong argument in public authorities not having to comply with requests that are manifestly unreasonable. The exception was placed in the EIR to protect public authority resources, so for the exception to be overturned the Commissioner would need to see clear reasons for doing so.
35. The Commissioner has also taken into account the amount of time and effort the Council has already spent addressing the complainant's concerns in regards to the planning application. This adds further weight to the view that the exception should be maintained.
36. The Commissioner considers that the fact the planning decision cannot be judicially reviewed means that there is limited public interest in the Council revisiting this matter.

*Balance of the public interest*

37. The balance of the public interest favours maintaining the exception. There needs to be clear reasons to overturn a regulation 12(4)(b) refusal and these are not evident in this case. Added to this are the arguments about the resources already spent in addressing the complainant's concerns, and the limited value the information would have in resolving the complainant's grievance.
38. The Commissioner's decision is that request is manifestly unreasonable as per regulation 12(4)(b) and the balance of the public interest favours maintaining the exception. No steps are required.



## Right of appeal

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39. 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 123 4504

Fax: 0870 739 5836

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

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

40. 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.
41. 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 .....**

**Gerrard Tracey  
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