

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

Date: 16 November 2017

Public Authority: Winchester City Council
Address: City Offices
Colebrook Street
Winchester
Hampshire
SO23 9LJ

Decision (including any steps ordered)

1. The complainant requested correspondence relating to a proposed development at Silver Hill. The Winchester City Council (the Council) applied Regulation 12(4)(b) (manifestly unreasonable) to the requested information.
2. The Commissioner's decision is that the Council was correct to apply Regulation 12(4)(b), the Council complied with Regulation 9(1) (advice and assistance) and the Council breached Regulation 14(2) on timeliness. The Commissioner does not require the Council to take any steps.

Request and response

3. In February and March 2016 the complainant made 3 requests under FOIA/EIR:

Request 1 – 16 February 2016

'Copies of all correspondence (including emails) relating to the proposed development at Silver Hill (being the subject of the development agreement dated 22 December 2004 between (1) Winchester City Council (2) Thornfield Properties (Winchester) Limited and (3) Thornfield Properties plc, as varied) which has been sent to or sent from each of:-

- Cllr Kim Gottlieb*
- Cllr Rosemary Burns; and*
- Cllr Brian Laming'*

This request was clarified on 19 February:

'We also refer to our letter of 16 February...For the avoidance of doubt, our request refers to all correspondence involving them, (i.e. not just emails sent to or from their respective Council email addresses).'

Request 2 – 19 February 2016

'Copies of all correspondence (including emails) relating to the proposed development at Silver Hill (being the subject of the development agreement dated 22 December 2004 between (1) Winchester City Council (2) Thornfield Properties (Winchester) Limited and (3) Thornfield Properties plc, as varied) which has been sent to or sent from each of:-

- Eric Pickles MP (as Secretary of State for Communities and Local Government);*
- [redacted name 1];*
- [redacted name 2]; and*
- Steve Brine MP*

This correspondence should include, for the avoidance of doubt, correspondence involving the Council's officers and members of Cabinet.'

Request 3 – 3 March 2016

'Copies of all correspondence (including emails) relating to the proposed development at Silver Hill (being the subject of the development agreement dated 22 December 2004 between (1) Winchester City Council (2) Thornfield Properties (Winchester) Limited and (3) Thornfield Properties plc, as varied) which has been sent to or sent from each of:-

- [redacted name 3]; and*
- [redacted name 4]*

This correspondence should include, for the avoidance of doubt, correspondence involving the Council's officers and members of Cabinet.'

4. On 18 April 2016 the complainant contacted the Commissioner as he had not received a response from the Council.
5. There has been considerable correspondence on this case, so the following is a summary of the information with the Commissioner.
6. On 24 June 2016, after the intervention of the Commissioner, the Council stated its intention to respond to the request and sent to the complainant a proposed search methodology.
 - It considered that all of the requests fall within the EIR.
 - All the requests seek copies of correspondence, including emails, relating to the "Silver Hill Development" which was being promoted by [redacted name of complainant] pursuant to the 2004 agreement.
 - The Council will proceed on the basis that all requests seek copies of relevant correspondence, including emails, sent to and from the various named individuals by Council officers, and members of Cabinet.
 - The Council uses a Mailmeter system which permits individual email accounts to be searched.
 - It is not possible to carry out a global search against all email accounts held by the Council.
 - Only a relatively small number of officers have been involved in the Silver Hill project, and therefore the search will be limited to the mailboxes of the following officers:-
 - Simon Eden, Chief Executive;
 - Steve Tilbury, Corporate Director;
 - Howard Bone, Head of Legal and Democratic Services;
 - Kevin Warren, Head of Estates
 - In terms of members of Cabinet, the mailboxes of Cllrs Humby, Godfrey, Pearson, Miller, Horrill, Weston, Tait, Read and Byrnes will be searched.
 - The search terms to be used in both cases will be for the names set out in the requests, as well as "Kim", "KG" for Cllr Gottlieb.
 - Taking account of Information Commissioner Guidance, it is considered that correspondence to/from Councillors other than Cabinet members would not be held by the Council for the purposes of Regulation 3(2) of the Regulations, because it would not be "in the authority's possession" if it is not being held to any extent for the business of the authority. (https://ico.org.uk/media/fororganisations/documents/1640/information_held_for_the_purposes_of_eir.pdf)
 - Once the correspondence has been retrieved, it will be reviewed to check that it falls within the scope of the request, and whether any exemptions apply.
 - If the above does not reflect the terms of your requests, please clarify these accordingly.
7. On 11 August 2016 the complainant asked the Council to extend the search and to address the following points:

- The requests refer to all correspondence involving the relevant persons named in the Requests, not only email correspondence. Please outline how the Council proposes to search for other relevant correspondence. These could include memoranda, letters or file notes (in each case whether handwritten or typed, and either held electronically or in physical files).
 - The Council proposes to search only the email accounts of selected Council officers and Cabinet members...[but]...The Council's functions extend not only to Cabinet, but also to other Council committees, in particular the Overview and scrutiny Committee and Audit Committee. Please explain why the Council is not also proposing to search the email accounts (as well as other correspondence) of councillors who are members of other Council committees. In particular our client considers that the accounts (and other correspondence) of Cllr Rosemary Burns, Cllr Kim Gottlieb and (former) Cllr Chris Pine should be searched.
8. On 30 September 2016 the Council refused the requests citing regulation 12(4)(b) – manifestly unreasonable.
- The initial search for 4 Officers and 9 Councillors returned 41,000 emails.
 - To widen the search in line with the letter of 11 August would significantly increase this number.
 - To include 25-30 members of The Overview and Scrutiny/Audit Committee (If this is a correct interpretation of the applicant's intentions) then based on the exercise already carried out, I would anticipate an average of at least 1,000-2,000 emails per councillor, which would mean a further 25,000-50,000 emails having to be reviewed.
 - In addition, there is no single central file for the Silver Hill development, and therefore a search for hard copy documents would entail finding, and then reviewing, all files held within the Council on the development. If file notes are included in the request, the search would need to extend to individual officer's notebooks. [2 key officers with 5 files each = 4-6 hours, plus 4-6 hours for handwritten notebooks]
 - If there is any information (other than emails) stored electronically, locating it would be difficult, as each officer has their own electronic file system and structure. A search would therefore necessitate reviewing each folder within relevant officers' electronic files, and looking at each document. As it may well not be possible to tell from a file name given to a particular electronic document whether it contains information of the type sought, each document will have to be opened up and reviewed.
 - An electronic search using the Microsoft Windows Explorer search facility would produce large numbers of electronic documents, some of which may be relevant, and some of which will not be. Each document

will have to be reviewed individually to check whether it falls within the scope of the Requests.

- Any attempt to carry out an electronic search of the Council's electronic records (using similar terms to those for the email Mailmeter search) would produce so many "hits" that reviewing the documents that would be revealed would be completely impracticable.
 - In summary, there would be 100,000 emails to be reviewed, which would be within the scope of the requests as clarified by the letter of 11 August. At 5 seconds per email, this process would take 140 hours. In addition there would be the hard files (10 hours).
 - Any attempt to carry out an electronic search of the Council's electronic records (using similar terms to those for the email Mailmeter search) would produce so many "hits" that reviewing the documents that would be revealed would be completely impracticable.
 - The letter also covered the burden to the Council and the public interest tests.
9. On 3 October 2016, the Commissioner reminded both parties of the obligation of an internal review as required under the Environmental Information Regulations 2004 (the EIR). The case was closed.
10. On 14 October 2016 the complainant provided the Commissioner and the Council with his objections concerning the delay, the failure to provide assistance, the absence of a proper complaints procedure, he disputed the estimated costs, the aggregation of the requests and provided arguments in favour of the public interest.
11. On 16 November 2016 the Commissioner urged both parties to work together to resolve this issue at an internal review. The Commissioner confirmed that she was advised that the Council would be willing to have a 'without prejudice' conversation to consider the progress of this case with a view to resolving it.
- 'Given the initial intention of the Council to search for the requested information and the limitations of FOIA/EIR to a consideration of the complaint (12.4.b), I would urge both parties to consider and discuss the substantive issues as part of an internal review. It may be that you are able to find a way forward.'*
12. On 28 November 2016 the complainant and the Council spoke on the telephone. No formal record was made of the conversation.
13. On 15 December 2016 the Council sent an email to the complainant confirming that *'I am reviewing the search results in the light of our discussion.'*
14. On 30 January 2017 the complainant informed the Commissioner that he had spoken to the Council on 28 November 2016 and *'was told that the Council were collating information to send to us.'*

15. On 26 April 2017, the complainant informed the Commissioner that he had not received any information from the Council.
16. The Commissioner reopened the case as no information had been provided by the Council and on 11 May 2017 contacted both parties to state that the focus of the investigation would be to determine whether the Council handled the request in accordance with the EIR, specifically, Regulation 12(4)(b) - manifestly unreasonable. The Commissioner understood that both parties accepted that:
 - This is information requested under EIR.
 - Information relating to the roles of Councillors as elected officials is 'not held' by the Council and is therefore, not within the scope of the requests.
 - To date, the Council has not provided the complainant with any information.
17. During the summer of 2017 the Council advised the complainant and the Commissioner that it had recruited an additional resource and would search, collate and disclose information to the complainant. Regular progress reports were provided by the Council to the Commissioner and the complainant.
18. On 9 June 2017 the Council advised the complainant that it had been working on the request for about 6 weeks and collated 9000 emails to assess fully. It sought clarity and confirmation to help make the processing of the 9000 emails easier:

'What would be helpful from you at this stage is clarity and confirmation of what you are seeking after speaking with Howard Bone at the end of last year.

Some additional questions in my mind, and if this is helpful, would be;

Is there a specific time period? If there is are there periods of time that can be discounted from within that?

Is there any interest in emails relating to the Judicial Review proceedings?

Is there any interest in emails relating to the The Claer Lloyd-Jones Report?

Is there a focus I can use to assess the remaining emails?

Are you still seeking ALL information or will the full assessment of email accounts suffice?

When I am clear what I am applying to these remaining emails I will confirm my time commitments in bringing this work to a conclusion...'

19. On 26 June 2017 the complainant responded *'We are seeking all of the information that we requested in our previous correspondence. It is important to my client that there are no gaps. We need to have comprehensive disclosure by the Council.'*

20. The complainant responded to the specific questions in red:

'Is there a specific time period? No If there is are there periods of time that can be discounted from within that? No

Is there any interest in emails relating to the Judicial Review proceedings? Yes

Is there any interest in emails relating to the The Claer Lloyd-Jones Report? Yes

Is there a focus I can use to assess the remaining emails? Please see the requests in our previous correspondence.

Are you still seeking ALL information or will the full assessment of email accounts suffice? It is ALL information, the [sic] includes notes of meetings and conversations in both electronic and manuscript. I suggest a review of hard copy files and personal document storage methods and notebooks is required.'

21. The Council stated that it accepted that no further refinement could be made and *'all 9000 emails were processed with no further refinement'*.

22. The Council dispatched 5 lever arch files to the complainant on 9 August, 14 and 29 September 2017 with covering letters.

23. The Council's first letter on 9 August detailed the background of the initial requests and the outcome of the internal review in November 2016 that refined the requests:

'The internal review that was undertaken worked with [redacted name of complainant] to refine the extent and far reaching nature of the requests made to something that could be considered as reasonable and manageable. It was confirmed that the interest for the Requester lay with Kim Gottlieb, his correspondence and correspondence about him relating to Silver Hill. The City Council considered this refinement meant that it was likely information could now be released to the Requestor'

24. In the third letter on 29 September the Council stated that it considered that it had complied with the requests:

'The City Council considers it has gone above and beyond in processing this request. The initial time estimate in processing the request back in August 2016 was estimated to be in excess of 150 hours to process

approximately 100,000 emails. At this time the City Council considered the request to be manifestly unreasonable.

After the review in November 2016 was undertaken, which focussed the searches onto 1 individual and the subject matter of the proposed development at Silver Hill, the City Council considered that this refinement meant that it was more likely the information could now be released and in the interests of transparency sought to do this. Approximately 40,000 emails were processed and in the region of 9,000 emails were identified that related to both Silver Hill and Councillor Kim Gottlieb...

The City Council now considers it has complied with the request, after the review undertaken with both parties, and has released all correspondence relating to both the proposed development at Silver Hill and Councillor Kim Gottlieb. The search was extensive, the search terms related to all those that the Requestor listed and the searches relate to both letter and email correspondence.'

25. On 4 October 2017, the Commissioner wrote to the complainant after this disclosure of information in an attempt to close the case informally: *'Since my letter to you on 11 May 2017, I understand that the Council has worked with you to refine the request and the Council has now released 5 lever arch files of correspondence in response to the refined request.'*
26. The Commissioner noted that the Council stated that it had provided all correspondence (letters, emails and attachments) within the scope of the refined request and that the Council did not redact the commercial content. The Council explained that the commercial content relates to the complainant and *'these emails and documents have not been redacted in any way. This would not be the case were these files being released to a member of the public'*.
27. In summary, as the Council had not relied on any exemption, for example Regulation 12(4)(b), as a basis for refusing to provide the withheld information within the refined request, the Commissioner's initial view was that the Council had fully complied with the refined request under FOIA/EIR.
28. On 17 October 2017 the complainant informed the Commissioner that *'the Council has not complied with our requests for information and this case should not be closed.* Referring to the Council's letter of 9 August 2017 the complainant disputed that there had been any agreement in November 2016 to limit the request:

'The letter refers to our requests and the Council's responses. It refers throughout to us requesting 'all correspondence (including emails)'

However, from the remainder of the letter it is clear that the Council has limited its review to emails and, in particular, to emails that relate to Kim Gottlieb. Page 4 of the letter refers to an internal review being undertaken after the Commissioner in November 2016 urged both us and the Council to work together to agree the information that was required. The letter refers to the internal review working with [redacted name of complainant]. I assume that this is referring to the call that I had with Howard Bone on 28 November 2016. The letter continues that "it was confirmed that the interest of the Requestor lay with Kim Gottlieb". This is not correct. Our interest lies in receiving all relevant information to understand if there was any wrong doing by the Council.'

29. The complainant also referred to his letter of 26 June 2017: *'I confirmed that we need all correspondence and there is no mention of this being limited to Kim Gottlieb. The Council appear to have ignored this and continued with their own misguided review...If the Council believed that on the call with Howard Bone, we agreed to deviate so drastically from the original requests they should have confirmed this in writing.'*
30. On 27 October 2017 the Commissioner wrote to both the Council and the complainant explaining that if there is no agreement on a refined request then the refined request will not replace the original requests and the Commissioner will need to consider the application of Regulation 12(4)(b) – manifestly unreasonable to the 3 original requests. The Commissioner asked both the Council and the complainant to provide any further supporting arguments that they may have.

Scope of the case

31. Therefore, the Commissioner considers the scope of this case to be the determination of whether regulation 12(4)(b) has been correctly applied to the 3 original requests.
32. The Commissioner has first considered the 3 original requests and notes that the requests are for *'Copies of all correspondence (including emails) relating to the proposed development at Silver Hill... sent to or sent from each of...'* and clarified as *'all correspondence involving them, (i.e. not just emails sent to or from their respective Council email addresses.'*
33. After the Council provided its proposed search method in June 2016, the complainant stated in August 2016 that the requests were for all correspondence including *'file notes, whether handwritten or typed'*. However, the Commissioner accepts the dictionary definition of correspondence as *'communication by exchanging letters or e-mail'*. This infers that each correspondence has a sender and a receiver of the communication and therefore the Commissioner considers that officers' notebooks would not be included in the scope of this request.

34. The third request relates to 2 persons with the surname Gottlieb who may/may not be related to the Councillor Kim Gottlieb. The Council has confirmed that when processing all the emails for the surname 'Gottlieb', only one email was found with the redacted first name(s) and this was disclosed to the complainant. The Commissioner therefore considers that this request (dated 3 March 2016) has been fully complied with.
35. The Commissioner then considered if the 2 remaining requests could be aggregated. Her Guidance (<https://ico.org.uk/media/for-organisations/documents/1615/manifestly-unreasonable-requests.pdf>) states:-

24. As the FOIA fees regulations do not apply under the EIR, there is no specific provision for the aggregation of substantially similar requests for environmental information. Our position, however, is that there may be occasions where it is permissible to consider a number of EIR requests together when deciding if they are manifestly unreasonable on the grounds of cost. This is in line with the approach to requests considered manifestly unreasonable on the grounds that they are vexatious, where the context in which they are made can be taken into account.

25. Public authorities need to take care, however, not to apply this principle indiscriminately or too widely.....We would encourage public authorities to be sensible about this issue and to only use this approach when dealing with multiple requests would cause a real problem. Remember, the test is "manifestly unreasonable" and this means that there must be an obvious or clear quality to the unreasonableness.

36. It is clear from the wording of both requests that they related to correspondence following the development agreement dated 2004 on the proposed regeneration of Silver Hill. Therefore the Commissioner considers that it is not unreasonable to consider both requests together when determining if regulation 12(4)(b) has been correctly applied.

Applicable legislation

37. As the requests are for information relating to a proposed development, the Commissioner considers that the withheld information is caught by the definition of environmental information in regulation 2(1)(c). (<http://www.legislation.gov.uk/uksi/2004/3391/regulation/2/made>)
38. The Council was therefore correct to handle the request under the terms of the EIR.

Reasons for decision

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

39. Regulation 12(4)(b) provides:

"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..."

40. The Commissioner considers that the inclusion of 'manifestly' in regulation 12(4)(b) indicates Parliament's intention that, for information to be withheld under this exception, the information request must meet a more stringent test than simply being 'unreasonable'. 'Manifestly' means that there must be an obvious or tangible quality to the unreasonableness of complying with the request.

41. The Commissioner therefore needs to consider whether the requests are likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to the serious purpose and value of the request.

42. The EIR do not contain a limit at which the cost of compliance with a request is considered to be too great. However, the Commissioner's guidance suggests that public authorities may use The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Regulations") as an indication of what Parliament considers to be a reasonable charge for staff time. The Regulations specify that £450 is the appropriate limit for local government authorities, and that the cost of complying with a request should be calculated at £25 per hour; this applies a time limit of 18 hours.

43. For the purposes of the EIR, a public authority may use this hourly charge in determining the cost of compliance. However, the public authority is then expected to consider the proportionality of the cost against the public value of the request before concluding whether the request is manifestly unreasonable.

Is the exception engaged?

The Council's position

44. In the refusal letter from the Council to the complainant on 30 September 2016, the Council stated that the initial search for 4 Officers and 9 Councillors returned 41,000 email messages to be reviewed and this number would significantly increase (to 100,000 and at 5 seconds

per email would be 140 hours) if the search was widened in line with the complainant's letter of 11 August 2016.

45. Following the appointment of an additional resource in April 2017, the Council spent 270 hours (at £25 per hour, £6750) of this person's work processing the reduced request (now contested).
46. The Commissioner understands that the Council's initial search of the key email accounts (4 Officers and 9 Councillors) using the research terms of 'Silver Hill', 'Cllr Gottlieb' 'Kim' 'KG' returned 41,000 emails. Out of these 9,000 were considered to be potentially captured by the requests. Then there was a further examination of these emails, as a result of which 6,000 of them were found to be relevant to the requests. This process of initial searches and examining the emails returned by those searches took 270 hours.
47. The Council has stated that it underestimated the complexity of the emails that related to Councillor Gottlieb and Silver Hill. Nearly 700 emails were released totalling around 4,000 pages: *'such a large number of pages indicate the length and trail of conversations contained within the emails and their attachments. Of those 9,000 emails over 6,000 were held and relevant.'*
48. The Commissioner has not seen the released information but has been advised by the Council that it covers *'planning, viability and design matters. They cover the variations to the Development Agreement and decisions made by the relevant council meetings. They cover additional information and counsels opinions submitted by Councillor Gottlieb. They cover behaviours and issues of trust and confidence. They cover Reference Group notes, Overview and Scrutiny meetings, Cabinet meetings and meetings of Full Council. They cover public interest matters and the Winchester Deserves Better campaign. Finally there are also emails that cover the Judicial Review and subsequent independent review and report of Claer Lloyd-Jones.'*
49. Using this experience, the Council provided the Commissioner with an updated estimate to process the widened requests from 140 hours (with an estimated total of 100,000 emails) to 580 hours (with an estimated total of 87,000 emails, 20,500 relevant emails and at a cost of £14,500).

The complainant's position

50. In relation to the serious purpose and value of the request, the complainant considered that the costs were not excessive. In his letter of 14 October 2016 he provided the Commissioner with the following background information:

'The requests relate to an agreement, which was terminated this year...to develop the Silver Hill area of Winchester. The total value of the development was in the region of £180 million. The Council had been working on the development project for over 10 years, investing significant public resources (both in terms of the time of public officials and public money) in attempting to bring the development to fruition before ultimately deciding not to pursue the development and terminating the agreement...In this wider commercial context, and in view of the significant cost to the taxpayer of the abortive scheme, it is evident that:

a) There is "wider value" in the requested information being publicly available; and

b) The underlying issue is an important one and disclosure of further information that sheds light on the Council's activities is valuable.'

51. The complainant did not accept that the burden on the Council of responding to these requests could reasonably outweigh these considerations. He referred to the Commissioner's previous decision in FER0586068 which stated that it is not *'unreasonable that the council may need to take approximately two weeks to consider what, if any parts of a 25 year contract that is worth over £100 million plus of tax payer money... to consider whether any exemptions or exceptions are engaged, to a contract such as this.'*

52. The Commissioner notes that there are differences between the previous decision (which concerned an ongoing live contract where the Council refused to consider what exemptions may apply) and the current case where the agreement had been terminated, the Council had considered exemptions and had disclosed information.

The Commissioner's conclusion

53. The Commissioner has considered the Council's and complainant's submissions and recognises that a significant volume of recorded information is held that would fall within the parameters of the complainant's original requests. The Commissioner notes that the Council has already spent 270 hours (£6750) in the processing of the now disputed 'refined' request.

54. It is therefore reasonable for the Commissioner to consider that compliance with the requests (as stated originally or as widened after the complainant disputed the search parameters), would consume significant public resources and place a substantial burden on the Council.

55. On this basis the Commissioner accepts that the request is manifestly unreasonable within the meaning of regulation 12(4)(b).

The public interest test

56. Regulation 12(4)(b) is subject to the public interest test set out in regulation 12(1)(b). This specifies that a public authority may only rely on an exception if, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosure.

The public interest arguments for the information being disclosed

57. The Council argued that the public interest arguments in favour of disclosure are considered to be:-
- The public interest in the Council being open and transparent in its dealings and actions;
 - The rights of organisations dealing with the Council to be able to pursue their legitimate interests;
 - Allowing individuals and companies to understand decisions made affecting their lives, and assisting individuals in challenging those decisions;
58. In relation to the serious purpose and value of the request, the complainant considered that the costs were not excessive. [See above paragraphs 50-51.]
59. The complainant also argued that there is a need for transparency; there has been a significant write-off of taxpayers money over the last 20 years while the Council has worked on the redevelopment scheme for the Silver Hill area; there have been significant losses for the complainant (£12 million); the on-going implications of the decision for local residents; the impact on future private investment and partnership; and the need to improve working practices in future.
60. The Commissioner accepts that there is a value to the requested information being disclosed. There is a general public interest in public authorities being transparent in their use of public money, and in this case there are wider questions about the future development of a part of Winchester. In this respect the Commissioner considers that the motivation of the requestor is to seek greater transparency about the decisions and actions of the Council over the development in question.

The public interest arguments for maintaining the exception

61. The Council states that while it accepts that as a public authority, it may be required to accept a higher burden in providing environmental information than other information, there is no perceived benefit to the general public in providing the information sought – the requests appear

to be solely for the purpose of allowing the complainant to pursue private interests:

- The decision to terminate the development agreement was taken, as far as possible, in open session, and the Council's reasons were fully explained. No proceedings have been issued against the Council ... The Council is firmly of the view that it has acted lawfully throughout the process, and has complied fully with the terms of the development agreement.
 - It would appear that the intention of the applicant in submitting the Requests has been to seek to obtain information to support proceedings against either the Council, or other individuals. There is no prima facie evidence that any individual has acted wrongly, nor has any such allegation been made.
 - The costs, both in officer time and in financial terms, are excessive against any reasonable scale, when assessed against the potential benefits (if any) that may arise from disclosing the information.
62. The Council stated that *'there is no evidence that if the Requests are complied with, the information disclosed will show anything other than that the Council has acted lawfully and properly in its obligations under the development agreement. There is no evidence that any of the named individuals have had an improper influence on any of the Council's decisions, which were taken primarily in open session. It would be wrong to expend public resources to provide information, at disproportionate costs, to a private company when the sole purpose for the Requests appears to be to take proceedings against private individuals.'*
63. The complainant's view was that the arguments put forward by the Council are *'incoherent and/or irrelevant'*.
64. The complainant argued that both FOIA and the EIRs are motive blind and is therefore not required to justify the reasons for the requests and *'it is wholly inappropriate for the Council to make assumptions in this regard'*.
65. The complainant disputes that the final decision to terminate the development agreement was made openly and transparently:
- The Council has already been identified as having failed to act transparently in relation to the Silver Hill development prior to the final decision to terminate. (independent report by Claer Lloyd-Jones)

- The Council did not make public certain key documents that it took into consideration when making the decision and part of the discussion was held in closed session.
 - The decision is undermined by certain Councillors' conflicts of interest.
66. The Commissioner is aware from her internet searches (and from the Council and the complainant) that this issue has been the subject of media interest, a Judicial review, the High Court considered the legality of allowing the developer to revise the plans without putting the scheme back out to commercial tender and that the Claer Lloyd-Jones report criticised the decision making of the Council.

Balance of the public interest test

67. The Commissioner recognises the inherent importance of accountability and transparency in decision-making within public authorities, and the necessity of a public authority bearing some costs when complying with a request for information. However, in considering the public interest test for this matter, the Commissioner must assess whether the cost of compliance is disproportionate to the public value of the request.
68. The Commissioner accepts the value of the request in this case and that the complainant is seeking to ensure that the Council acted appropriately and transparently. However she is also fully aware of the burden and cost which the requests have already had on the Council.
69. Although, the Commissioner considers that the request has a serious purpose and value, she recognizes that this value has been weakened by the issues that have already been raised and considered in other forums. (For example the Lloyd-Jones report)
70. Having considered the relevant factors in this matter, the Commissioner has concluded that the cost of compliance with the original requests is disproportionate to the public value of the requests and the public interest favours the maintenance of the exception. The Commissioner has decided that the Council was correct to reach the conclusion that the requests were manifestly unreasonable and was able to apply Regulation 12(4)(b) to the information.

Regulation 9 – Advice and assistance

71. Regulation 9(1) provides that:

A public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.

72. This regulation places a duty on a public authority to provide advice and assistance to someone making a request. The Commissioner considers that this includes assisting an applicant to refine a request if it is deemed that answering a request would otherwise incur an unreasonable cost.
73. The Commissioner recognises that the Council engaged with the complainant when setting out the search parameters for the requests (June 2016), after the Commissioner urged both parties to seek a resolution during an internal review (November 2016) and provided regular updates when processing the information before its release (Summer 2017).
74. On this basis the Commissioner considers that the Council has complied with regulation 9(1).

Regulation 14(2) – Refusal to disclose information

75. Regulation 14(2) specifies that a refusal notice must be provided no later than 20 working days after the date on which the request was received.
76. The Council did not respond to the 3 original requests within 20 working days. The Commissioner must therefore find a breach of regulation 14(2).

Other Matters

77. It is unfortunate that the Council failed to make a formal record of the outcome of the telephone conversation in November 2016 and proceeded to disclose information on a 'refined' request that the complainant disputes.
78. Under Regulation 11 of the EIR, it is a legal requirement for the public authority to conduct an internal review.
79. Therefore, the Commissioner would expect the Council to reconsider its complaints procedure so that a formal internal review is available for every FOIA/EIR case and that the outcome is formally recorded.

Right of appeal

80. 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

81. 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.

82. 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

Pamela Clements
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