

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

Decision notice

Date: 26 July 2017

Public Authority: Gwynedd Council
Address: Council Offices
Shirehall Street
Caernarfon
Gwynedd
LL55 1SH

Decision (including any steps ordered)

1. The complainant has requested information about traffic and vehicular access calculations. Gwynedd Council ('the Council') refused to provide the requested information citing Section 14(1) of the FOIA (vexatious requests). The Commissioner's decision is that the Council has correctly applied Section 14(1) to the request. She does not require any steps to be taken.

Request and response

2. On 30 August 2016 the complainant wrote to the Council and requested information in the following terms:

" I have been informed that you hold printed documents to calculate the following items.

A) The visibility splay from a car park to a main road with a 30 mph speed limit.

B) The distance beyond the entrance width for the use of Polite white lines no parking zone to protect accesses to houses.

Would you please, under the terms of the Freedom of Information Legislation provide me with a copy of those documents".

3. The Council issued a refusal notice on 10 October 2016 stating that it was refusing the request under section 14(1) of the FOIA as it considered the request to be vexatious.
4. On 11 October 2016 the complainant requested an internal review into the Council's refusal to comply with the request. He submitted representations in support of his view that the request was not vexatious.
5. The Council provided the outcome of its internal review on 11 November 2016 and upheld its decision that section 14(1) applied to the request. The Council advised that, in view of the subject matter associated with the request ie parking restrictions, it has also considered the request under the EIR as well as the FOIA. It considered that that request was manifestly unreasonably and as such regulation 12(4)(b) applied.

Scope of the case

6. The complainant contacted the Commissioner on 14 November 2016 to complain about the way his request for information had been handled.
7. The Commissioner considers the scope of this complaint to be whether the Council has correctly refused the request under section 14(1) of the FOIA and/or regulation 12(4)(b) of the EIR.

Reasons for decision

Correct access regime

8. The request in this case is for information about guidelines/calculations for visibility splays at junctions and crossroads, and polite white lines (white lines painted onto a road to draw attention to a driveway/dropped kerb). The Council applied section 14(1) of the FOIA to the request of 30 August 2016, or in the alternative it considers regulation 12(4)(b) of the EIR to apply. The Council advised the Commissioner that it took the view that management of traffic and traffic related matters represented information which *could* relate to the environment and as such was capable of falling within the definition of environmental information as defined by regulation 2(1) of the EIR. However, the Council concedes that the management of parking on a highway may not fall within the definition of environmental information.
9. In normal cases, the Commissioner has sight of the actual information held relevant to a request when making a decision as to the correct

access regime. However, in a case involving the application of section 14(1) (or regulation 12(4)(b)), the Commissioner is unaware as to what information, if any, the public authority holds relevant to a request. In such cases, the Commissioner will therefore make a decision based on the wording of the request.

10. Based on the wording of the request in this case and the fact that it relates to calculations/guidelines in respect of road markings and road layouts, rather than for example plans of roads and road markings, the Commissioner considers that the correct access regime is the FOIA.

Section 14 – vexatious requests

11. Section 14(1) of FOIA 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.
12. The Commissioner has published 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.

The Council's position

13. The Council advised the Commissioner that the decision to refuse the request on the grounds of it being vexatious was not taken lightly. However, it explained that there is a considerable history to the matter of persistent and repeated correspondence from the complainant which has involved significant officer time and input over a number of years.

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

14. The Council considers that the request in this case is a continuation of correspondence from the complainant relating to traffic orders in their area. The current traffic order was put in place in February 2013.
15. The Council advised that its Environment Department holds five lever arch files relating to traffic orders in the area in question, the bulk of which relate to correspondence from the complainant himself or from a representative on his behalf. One officer at the Council has personally considered approximately 180 items of correspondence generated from the complainant, or on his behalf, during the period between 2011 and 2014. The correspondence, almost without exception, relates to the making of traffic orders in the area, their amendment or related complaints. The correspondence raises concerns about the Council's management of the matter, the design and health and safety implications of the proposed orders and complaints about the conduct of the Council and its officers.
16. The Council acknowledges that compliance with the request in this case would not necessarily be burdensome. However, it considers the request to be a continuation in a long campaign of correspondence from the complainant relating to traffic orders. The cumulative burden of dealing with correspondence from the complainant since 2011 has taken up a significant amount of officer time. The matter has involved senior officers including Heads of Service, Monitoring Officers and the Chief Executive. The time that these officers have spent dealing with the matter has diverted them away from providing services to the wider community of Gwynedd. The Council contends that it has made every effort to respond to concerns which the complainant has raised over the years and comprehensively explained the reasoning and justification behind the introduction of the traffic order.
17. The Council believes that the request is an attempt to re-open a matter which has already been the subject of detailed internal scrutiny and has been the subject of a number of complaints to the Public Services Ombudsman for Wales ('the PSOW'). The Council advised that the matter of traffic orders had been considered at the highest level within the Council. It has also been the subject of a review carried out by its Chief Executive. In addition, the complainant has referred the issue of the traffic order to the PSOW on more two occasions, both before the traffic order came into effect and afterwards. The PSOW found no evidence of maladministration in relation to the first complaint and determined that the second complaint was not one that it should investigate. The complainant asked the PSOW to review its decision relating to the second complaint and the outcome was that the original decision not to investigate was upheld.

18. The Council accepts that traffic and parking management is an issue which affects the wider road using public. However, the specific issues raised by the complainant revolve around his particular curtilage. The parking order in question has been the subject of detailed consultation and scrutiny at the time the order was made.

19. The Council stated that it has had to refuse to correspond with the complainant on this matter :

"because of persistent demands on officers to go over the same ground on a matter that was completed some 3 years ago. Notwithstanding involvement with PSOW and no challenge to the order being made there is a history of continued correspondence aimed at challenging the original order. This can legitimately be described as a campaign of which the information request can reasonably to be considered a part".

20. Based on the correspondence exchanges between itself and the complainant and the fact that the matter has been the subject of a number of investigations, both internal and external the Council considers there is sufficient evidence to suggest that correspondence from the complainant on the subject "will not abate and will continue through misuse of the FOIA/EIR portal if allowed".

The complainant's position

21. In his complaint to the Commissioner the complainant provided a copy of further observations/dissatisfaction that he sent to the Council following receipt of its internal review response of 11 November 2016. In this document the complainant rejects the Council's view that the request is an attempt to re-open matters and continue correspondence and disagreement with the Council. The complainant advised that he was "merely commenting on items brought up by the Council which I consider to be not correct and summarise what the Council do not want to consider".

22. The complainant believes there is a contradiction in the Council's internal review response in that on the one hand it states that it considers the matter closed, but then goes on to say that the matter would be reopened if the information requested was provided. He considers that the refusal is "a crude way of resisting my request".

23. In this document the complainant sent to the Council, he confirmed that he already had information in his possession on the length of visibility splays. He indicated that the information in his possession suggested that the Council had not adhered to the guidelines in question within the scheme in place near his home.

24. In his internal review request the complainant indicated that the volume of correspondence had been necessary because the Council had refused to answer requests. He also stated that officers had been "devious, disingenuous, uneconomical with the truth and misleading". As such he considers that the Council has been responsible for the situation in terms of the volume of correspondence. The complainant states that he does not "derive any satisfaction from being forced to write so many letters but am determined to expose the truth and the illegal action of the Council. He alleges that the Council misled local residents during the consultation period and the scheme implemented as a result of the order is illegal and the Council has "committed a criminal act".

The Commissioner's view

25. 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.
26. 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.
27. The Commissioner notes the Council's representations in relation to its previous dealings with the complainant. In this case, the Council has been able to demonstrate that it has engaged to a significant extent with detailed correspondence from the complainant and representatives on his behalf relating to parking near his property over a number of years, and it has taken his correspondence seriously. The Commissioner is prepared to accept that, cumulatively, the Council has spent a significant amount of time and resources in dealing with the complainant's correspondence and information requests. The problem here is not a lack of engagement from the Council but simply that the complainant disagrees with what the Council has done and its justification for it.

28. The Commissioner has seen a small sample of correspondence exchanges between the Council and the complainant. She notes that since 2013, various officers within the Council have been involved in responding to the complainant regarding the subject of parking restrictions at the area in question. The officers include the Head of Legal, the Head of Regulatory Department, a Senior Solicitor and the Chief Executive of the Council. The Commissioner notes that the Council has advised the complainant on several occasions that it is unable to add anything further to the explanations previously provided and that it considers the matter closed. The Council has also indicated on a number of occasions that it does not intend to enter into further correspondence on the matter. The Commissioner also notes that in a letter to the complainant in 2014, reference is made to the complainant having sent a letter to the home address of the Chief Executive, for which the complainant later apologised.
29. The Commissioner notes that the request in this case relates to parking concerns and a parking order in place at the complaint's property, ie the issue at hand is one that individually affects the requestor. The matter has been subject of independent investigation via the PSOW, who either did not uphold the complaint or concluded it was not one that he should investigate. The Commissioner is prepared to accept that the request in this case is a further attempt to challenge the decisions and actions taken by the Council, and question the competence of Council officers involved in the matter. It appears to the Commissioner that the Council has made all reasonable attempts to explain and justify its actions to the complainant. The Commissioner agrees with the Council that responding to the requests would not resolve this matter, but would instead prolong the argument when the Council has already made its position clear. Pursuing numerous avenues of complaint and not being satisfied with any view that differs from one's own is a common characteristic in cases involving vexatious requests.
30. The Commissioner also considers that, based on the evidence provided in terms of the length of time that the complainant has been corresponding with the Council about the subject matter it is reasonable to conclude that he will continue to submit requests, and/or maintain contact about the subject matter regardless of any response provided to the request in question. The disruption to the Council resulting from any continuing correspondence would be disproportionate. The Commissioner is therefore satisfied that, in the context of the Council's previous and ongoing dealings with the complainant, compliance with the request would result in a disproportionate burden on its resources.
31. Taking into account all the circumstances of the case, the Commissioner considers that a strong case has been presented to demonstrate that the request is vexatious. It was not the intention of the legislation that

individuals should be allowed to pursue personal grievances to an unreasonable extent through the use of the FOIA. Limited public resources should not be spent on continuous unproductive exchanges. The FOIA gives significant rights to individuals and it is important that those rights are exercised in reasonable way. There comes a point when the action being taken and the associated burden being imposed on the authority is disproportionate to the objective that the complainant is attempting to achieve. That point has been reached in this case. There is nothing to suggest that there is any serious purpose or value behind the request which is sufficient to warrant the Commissioner overturning the Council's decision to rely on section 14(1).

32. Taking into consideration the findings of the Upper Tribunal in Dransfield that a holistic and broad approach should be taken in respect of section 14(1), the Commissioner has decided that the Council was correct to find the request vexatious. Accordingly, the Commissioner finds that section 14(1) has been applied appropriately in this instance.

Right of appeal

33. 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

34. 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.
35. 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
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