

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 8 January 2018

**Public Authority:** Rugby Borough Council  
**Address:** Town Hall  
Evereux Way  
Rugby  
CV21 2LA

#### Decision (including any steps ordered)

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1. The complainant has requested from Rugby Borough Council (the Council) information relating to a site visit to a particular building project based in the local area.
2. The Commissioner's decision is that the requests are manifestly unreasonable under regulation 12(4)(b) of the Environmental Information Regulations 2004 (EIR). Therefore, the Commissioner does not require the Council to take any steps.

#### Request and response

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3. On the 18 November 2016 the complainant wrote to the Council and requested information in the following terms:

*"Should a further formal complaint have been raised I wish to make an FOI request for full details of the same.*

*I wish to make a further formal FOI request for the documentation and supporting evidence relating to this site visit as, although I should already have been furnished with this if it exists, I have yet to see any clear proof that such a visit was ever made.*

*Should there have been any internal reviews carried out regarding Enforcement and Planning as a result of this case I believe that any related documents would be in the public domain and I also make a formal FOI request for this information."*

4. On 19 December 2016 the complainant wrote to the Council asking for an acknowledgement of receipt and on the following day, the Council acknowledged receipt of the correspondence.
5. On 19 February 2017 the complainant chased the response.
6. The Council responded on 20 February 2017. It provided the complainant with a link to the Local Government Ombudsman's (LGO) decision notice and stated that all of the relevant matters had been considered by the LGO. The Council had said that the LGO concluded there is no fault by the Council. Therefore the Council's view is that the matter is now closed.
7. On 27 February 2017 the complainant replied to the Council. He said his correspondence of 19 December 2016 had contained three FOIA requests which he considered had not been addressed.
8. On 13 March 2017 the complainant wrote to the Council stating that he had not received the three items requested under the FOIA. He asked the Council to either supply the information or explain the reasons for its refusal.
9. The complainant contacted the Commissioner on 1 April 2017 to complain about the Council not responding to his requests.
10. Further to the ICO's intervention, the Council responded to the complainant on 9 May 2017. It considered the requests to be an unjustified and improper use of a formal procedure and that section 14 of the FOIA applies. The Council said it would not respond to the requests.
11. On 25 May 2017 the complainant wrote to the Council and disputed its application of section 14.
12. The Council responded and guided the complainant to the ICO if he remained unhappy with the outcome to his requests.

## **Scope of the case**

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13. The complainant contacted the Commissioner on 12 June 2017 to complain about the way his requests for information had been handled.
14. The Commissioner considers the scope of the case is to determine whether the Council was correct to refuse to comply with the requests.

## **Background**

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15. The context of this case is a prior approval application and a planning application at the complainant's home. The matter has been investigated by the Local Government Ombudsman, the report can be found at:  
<http://www.lgo.org.uk/decisions/planning/planning-applications/15-017-875>.
16. The complainant has complained at length about various aspects of the case. However, the issue which he appears to be currently focusing on is whether or not the Council's planning enforcement officer visited the property in March 2015.
17. The Council confirmed that its systems show that a visit had been made and it also confirmed that there are no notes held relating to this visit. The Council referred the Commissioner to paragraph 33 of the ombudsman's investigation as it clarifies that it is irrelevant whether or not the visit had taken place.

## **Reasons for decision**

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### **Is the information environmental?**

18. The Commissioner has initially considered whether the requests are for environmental information. Information is 'environmental' if it meets a definition set out in regulation 2 of the EIR. Environmental information <sup>[1]</sup> must be considered for disclosure under the terms of the EIR rather than FOIA.
19. Under regulation 2(1)(c), any measures that will affect, or be likely to affect, the elements referred to in regulation 2(1)(a) or the factors referred to in regulation 2(1)(b) will be environmental information.
20. The requested information in this case, relates to an approval application and a planning application for a particular building project. Such matters can clearly be identified as measures (including

administrative measures), such as policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect the elements and/or factors. The Commissioner therefore invited the Council to consider the requests under the EIR.

21. The Council decided that it would rely on 12(4)(b) to the extent that the EIR was found to apply, although it maintained that section 14 of FOIA would cover any non-environmental information. The Commissioner's position is that the requests, in their entirety, are covered by the EIR as it is for environmental information which relates to a planning application. She has therefore gone on to consider the Council's reliance on regulation 12(4)(b) of the EIR.

### **Regulation 12(4)(b) – where the request is manifestly unreasonable**

22. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose environmental information to the extent that the request for information is manifestly unreasonable<sup>[2]</sup>.
23. There is no definition of 'manifestly unreasonable' under the EIR. The Commissioner considers that 'manifestly' implies that the request should 'obviously' or 'clearly' be unreasonable.
24. A request can be manifestly unreasonable for two reasons: Firstly if it is vexatious and secondly where the public authority would incur unreasonable costs or where there would be an unreasonable diversion of resources. In this case the Council considers that the request is vexatious. The test under regulation 12(4)(b) is therefore similar to that under FOIA for vexatious requests, with the addition of a public interest test if the exception is engaged.
25. The term 'vexatious' is not defined in the legislation. In *Information Commissioner vs Devon County Council & Dransfield* <sup>[3]</sup>, the Upper Tribunal took the view that the ordinary dictionary definition of the word vexatious is only of limited use, because the question of whether a request is vexatious ultimately depends upon the circumstances surrounding that request.

<sup>[1]</sup>[https://ico.org.uk/media/fororganisations/documents/1146/eir\\_what\\_is\\_environmental\\_information.pdf](https://ico.org.uk/media/fororganisations/documents/1146/eir_what_is_environmental_information.pdf)

<sup>[2]</sup><https://ico.org.uk/media/for-organisations/documents/1615/manifestly-unreasonable-requests.pdf>

26. The Tribunal concluded that 'vexatious' could be defined as the "...manifestly unjustified, inappropriate or improper use of a formal

*procedure” (paragraph 27). The decision clearly establishes that the concepts of ‘proportionality’ and ‘justification’ are central to any consideration of whether a request is vexatious.*

27. 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 and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) and harassment or distress of and to staff. 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, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests” (paragraph 45).*

28. In order to determine whether the Council is entitled to refuse the requests as manifestly unreasonable, the Commissioner will decide whether the requests are vexatious as per her guidance <sup>[4]</sup>. If she decides the requests are vexatious, she will determine whether the balance of the public interest supports maintaining the exception.
29. The Commissioner has identified a number of ‘indicators’ which may be useful in identifying vexatious requests. 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.

<sup>[3]</sup>UKUT 440 (AAC) (28 January 2013)

<sup>[4]</sup><https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

## **The Council’s position**

30. The Council initially responded to the complainant by applying section 14(1) of the FOIA as it considered the requests vexatious. However, following a review of the Council's response, the Commissioner considered the requests as environmental information and she asked the Council to reconsider its response under the EIR.
31. The Council considers the complainant's initial request in August 2014, which was for relevant case information and his request of September 2015 for information about the Council's handling of the relevant planning matters, was a legitimate pursuit of a genuine grievance. It said that disclosure of the relevant information served a genuine public interest in the workings of the Council's planning and enforcement team.
32. The Council explained that the complainant had pursued the matter through his initial request for information and that the Council had answered this by full disclosure. It went on to say that the complainant's concerns were considered by the planning process (the prior approval process and the full planning application) where his objections were considered by the planning committee. The complainant raised the matter with his MP, who also raised the matter with the Council on his behalf. The Council added that the LGO investigated and published its report and it concluded that the Council was not at fault.
33. The Council stated that it believes that these requests are part of an obsession. In its view, this is reflected by the complainant's refusal to relinquish the matter after over three years from his first complaint to the Council. Also, it said the fact that the complainant persisted with pursuing his requests despite the Council's full disclosure and independent investigation by a third party was evidence of his obsessiveness.
34. The Council argued that it does not believe that its previous responses have been obstructive or incomplete and it has not caused the complainant to continue to pursue his complaint in order to achieve full disclosure or understanding.
35. The Council believes that the request contains a number of indicators and it listed them in the following terms:
  - A burden on the authority
  - Unreasonably persistent
  - Pursuing an unfounded accusation
  
  - Demonstrates intransigence

- Part of a repeated request
  - Intention to cause annoyance
  - Is futile
  - Argues points
  - Raises repeated issues
  - Disproportionate effort
36. The Council explained to the Commissioner that it is a small authority. It has a few individual officers responsible for tasks which would be conducted by several officers within larger authorities. In this case the Council's planning enforcement officer has been the subject of the complaint and the officer has had to deal with the complainant throughout the planning enforcement and planning application processes. It said that this officer is also responsible for first stage complaints and FOIA administration for the planning department. Consequently, this officer has had to repeatedly deal with the complaint to varying degrees, at every stage and taking a considerable amount of time which diverted their attention from other matters.
37. The Council accepts that the complainant may not be intentionally targeting the individual, although it believes the effect is an increasing feeling of harassment. The Council provided the Commissioner with a timeline of the complaints received from him. This, it said, excluded correspondence sent and received as part of the prior approval and planning and enforcement processes, which were significant. The Council said that each stage included a high volume of correspondence as did the related planning processes.
38. The Council's timeline is as follows:

Date	
16/4/14	Complaint received by the council from [name redacted] regarding a planning application for a single storey extension at [name redacted]
22/4/14	Appeal received following the response to [name redacted] complaint
18/8/14	Freedom of Information request received – copy of the case officer's report

3/9/15	Freedom of Information request for copies of all the data, files, case notes and correspondence etc., both electronic and hard copy, held by Rugby Borough Council and its associates pertaining to the two Planning Department references - R14/0490 and R15/1265
18/3/16	Complaint received from the Local Government Ombudsman regarding the planning approval for [name redacted]
13/10/16	Letter sent to Mark Pawsey MP in response to a complaint received from [name redacted]

39. The Council said it accepts that dealing with these particular requests in itself will not cause a disproportionate level of disruption, irritation or distress. However, taking into account the context of the case, the cumulative impact and the likelihood that responding to the requests will provoke further correspondence, the Council stated that with this and then having to deal with the requests is unjustified. It believes that the complainant has demonstrated a continuing appetite to continue correspondence on a matter that has been independently investigated and which is resolved.
40. The Council cited a previous appeal (EA/2007/0088) where the Information Tribunal had found a single request vexatious because the complainant had repeatedly ignored the findings of independent investigations. The Council also quoted a paragraph from a Decision Notice (FS50324650) which it found comparable to this case as the Commissioner decided that in the repeated pursuit of a matter, *"even with the acceptance of the request's serious purpose, it has reached a point, in light of contrary evidence, where the serious purpose of the request has been mitigated by the complainant's unwillingness to accept such evidence."*
41. The Council is of the view that a public authority has to be able to end correspondence on a matter and that in this case, it would argue that this point has been reached. It considers the complainant is seeking to use the FOIA/EIR to pursue his grievance and that he has no genuine interest or need for the information he has requested.
42. Taking the above submissions into account, the Commissioner is satisfied that regulation 12(4)(b) of the EIR is engaged. The Commissioner has proceeded to consider the public interest test.

## The public interest



43. The Commissioner will consider whether the public interest is best served by the Council complying with the complainant's requests or whether the public interest lies in maintaining the application of the exception under regulation 12(4)(b) of the EIR.

*Public interest in disclosure*

44. In making its decision, the Council reported that it had considered the public interest in promoting transparency and accountability of its planning and planning enforcement teams. It argued that the public interest has already been served by the report of the LGO, the disclosure of information in response to the complainant's previous FOI requests and in response to his formal complaints.
45. The complainant stated that he has made three specific FOI requests to the Council and that they have not been complied with but repeatedly ignored. He disputes his requests are vexatious and he considers the behaviour of the Council's employees is a matter of public interest. The complainant said he cannot understand why the Council will not comply with what he considers to be a simple and inexpensive request for information. He questioned the Council's reason for not wanting to publish the content and said *"it may put them in a bad light or reveal mistakes and incompetence in a case which directly involved a Planning Department employee."*
46. The complainant disputes his requests to be repetitive or vexatious. He is of the view that there is a high level of public interest in the way the Planning Department functions. The complainant explained that he made his FOI requests to obtain facts relating to Planning Officers and that he seeks to safeguard other rate payers from suffering from, what he considers to be, the same incompetence as he believes he had experienced.

*Public interest in maintaining the exception*

47. The Council is of the view that consideration of these information requests will not add anything to public knowledge of how the Council's planning and planning enforcement teams operate, or on this particular case. It believes that responding is however likely to result in continued, protracted correspondence on a matter that has already been considered by an independent body that found no fault.

48. The Council said it had considered all of the arguments for and against disclosure within its previous correspondence. It believes that as a public authority it has a duty to protect public resources, therefore the Council decided that it is in the public interest to allocate those resources to other matters.

*Balance of the public interest*

49. The Commissioner has considered both the Council's and the complainant's position regarding this case. She has taken into account the fact that the complainant's current and previous requests have placed a significant burden on the Council and as a result caused disruption and unwarranted use of its increasingly limited resources.
50. It has been noted that the Council had previously disclosed some information to the complainant and that he continued to pursue the matter by raising it with a third party. It is clear from the submissions, that the complainant declined to relinquish the matter and he persisted with pursuing his requests with the Council even though information was released to him and an independent investigation had been conducted.
51. The Commissioner acknowledges the burden of the requests on the authority. In particular, the fact that the Council is a relatively small authority and it relies on fewer officers to deal with FOI complaints as well as other Council responsibilities. Whilst the Commissioner does not consider there to be a disproportionate level of disruption, irritation or stress in dealing with the requests, she considers that the Council has demonstrated that the requests and correspondence have shown an unreasonable persistence.
52. The Commissioner accepts the Council's argument that the requests demonstrates intransigence. This is because the complainant is pursuing an unsupported allegation and she notes that the matter has already been addressed. However, the complainant declined acceptance of the planning process outcomes and with the LGO's investigation. The Council has also explained that information relating to the planning decisions has already been seen by the complainant, thereby diminishing the value of the requests.
53. The Commissioner agrees with the Council that the complainant is effectively seeking to pursue a grievance which the Council has previously addressed. It appears to be that the complainant's latest requests only served his own personal interest in pursuing his grievance and that there was no public interest to be served by the Council responding to the requests.

54. The Commissioner recognises that further pursuit of this grievance is unlikely to lead to any acceptable resolution. She has noted the complainant's objective and his view regarding the Council's conduct during the planning of the project. Taking into account the context and the complainant's relationship with the Council, the Commissioner considers that if the Council was to comply with the requests, it would be unlikely to satisfy the complainant.
55. The Commissioner considers the requests are obsessive and persistent. She is satisfied that the requests are a means by which the complainant is trying to reopen a matter that has been dealt with. She is of the view that the complainant is using the EIR to sustain dialogue with the Council about this matter and the Commissioner considers this to be a misuse of the EIR and its purpose.
56. The Commissioner considers that the factors in favour of complying with the requests are outweighed by those in favour of maintaining the exception. Accordingly, she finds that the Council is entitled to rely on regulation 12(4)(b) of the EIR in respect of the complainant's request on the basis that it is manifestly unreasonable.

## Right of appeal

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57. 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)

58. 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.

59. 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 .....**

**Alun Johnson**  
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