

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

**Date:** 23 October 2018

**Public Authority:** Cheshire East Council  
**Address:** C/O Municipal Building  
Earle Street  
Crewe  
Cheshire  
CW1 2BJ

**Decision (including any steps ordered)**

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1. The complainant has submitted a four requests for information to Cheshire East Council. The complainant's requests concern three planning applications relating to land at Henbury, land Between Whirley Road and Chelford Road, Macclesfield and land to the South of Chelford Road. Having refused to comply with the complainant's request in reliance on section 14(1) of the FOIA, the Council reviewed its position and has determined that it should instead rely on Regulation 12(4)(b) of the EIR.
2. The Commissioner's decision is that Cheshire East Council has correctly applied the exception to disclosure provided by Regulation 12(4)(b) of the EIR to complainant's requests 1, 2 and 4.
3. The Commissioner has decided that the complainant's third request is for information which is the requester's own personal data. Request 3 is therefore subject to the exception to disclosure provided by Regulation 5(3) of the EIR and it falls to be considered under the subject access provisions of the Data Protection Act.
4. The Commissioner requires the Council to take no further action in this matter.

**Request and response**

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5. The complainant has submitted a number of requests for information to Cheshire East Council. Four of the complainant's requests and the Council's responses are detailed below.

**Request 1:**

6. On 2 March 2018, following your receipt of an email of 2 March 2018 sent by the Council's Director of Education, Jacky Forster, the complainant wrote to the Council and asked for the following information:

"Please can you send any email correspondence for 28th February & 1 March 2018 which will of used the Cheshire East Email Servers between, i.e. from or to any of the followings Councillors & Cheshire East Officers and Executives & How Planning regarding and or containing content / subject relating to [the complainant], Henbury Parish Council, Land Between Whirley Road & Chelford Road Macclesfield and Land to the South of Chelford Road Macclesfield & Planning Applications 17/4034M, 17/4277M, 18/0294M, or of the same Land under its Local Plan reference numbers or regarding Educational needs for the fore mention land and planning applications.

The correspondence would have been between the following; [name 1 redacted], [name 2 redacted], [name 3 redacted], [name 4 redacted], [name 5 redacted], [name 6 redacted], [name 7 redacted]. [name 8 redacted], [name 9 redacted], [name 10 redacted], [name 11 redacted], [name 12 redacted], [name 13 redacted], How Planning.

7. The Council responded to the complainant's request on 3 April 2018, in a letter dated 27 March. The Council's response was to refuse to comply with the request in reliance on section 14(1) of the FOIA. The Council's reason for applying section 14(1) was the "context and history of the case" and it having received 20 communications from the complainant since June 2017.
8. Additionally, the Council advised the complainant that, under the provisions of section 3(2)(a) of the FOIA, it does not hold the emails of some of the named councillors because all emails which have been sent to these councillors relates to their capacity as Ward Councillors.

**Request 2:**

9. On 1 April 2018, referring to an email dated 28 March 2018 which concerns the withdrawal of application 17/4034M from an agenda, the complainant wrote to the Council and asked to be provided with "...information as to which junction [name redacted] is referring to...".

10. The Council responded to the complainant's request later the same day, advising him that the injunction referred to is the Broken Cross roundabout junction.
11. On receipt of the council's reply, the complainant responded to the Council by asserting that, "...there are 4 junctions at Broken Cross, and clearly [name redacted] is being economical with the information".

**Request 3:**

12. On 22 May 2018, the complainant wrote to the Council and submitted another request for information. This time the complainant asked:

"Please can [I] make a Freedom of Information request to see which Officers were involved the decision to block my FOIs request & from writing to Mr David Rutley, MP. Which FOI in particular did they find vexatious.

Who within the organisation or which Councillor/s objected to my requests and thought it necessary to place a block on requests on planning applications 17/4277M & 17/4034M."

13. The Council responded to the complainant's request under reference 2886933, by advising him:

"I am unable to deal with this request as it is in relation to the same topic as your previous request – 2438833 – which was refused under section 14 (1) of the Freedom of Information Act 2000 on the grounds that it was vexatious. The Information Commissioner has now received your complaint about this matter and we await their decision. However, in order to provide you with advice and assistance, I will confirm that the initial decision to deem your FOI request as vexatious was made by senior officers within the Compliance and Customer Relations Team. No officer from Cheshire East Council has the authority to "block" you from writing to your MP, and as far as I am aware no attempt has been made to do so."

14. The Council also responded to another request made by the complainant on 22 May 2018, where he asked to be provided with "...a copy of all 10 FOI responses which you quote in your reviews."
15. The Council's response was, "You have already been sent the responses as required by the Freedom of Information Act 2000 and Environmental Information Regulations 2004".

**Request 4:**

16. On 11 June 2018, the complainant wrote to the Council and submitted a further request for information. This time the complainant asked for documents "...appertaining to the alterations of the Broken Cross roundabout in 2015, which Jacobs have confirmed they produced for CEC". The complainant asked that for document to be made available by 4pm that same day.
17. The Council responded to the complainant's request by advising him that, "I believe there has been a FOI request for the document which is being reviewed. I don't have a copy of the plan to which you refer nor are they part of the current application so they would not be on the website".

### **Scope of the case**

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18. The complainant initially contacted the Commissioner on 6 April 2018 to complain about the way his request for information had been handled.
19. In rebuttal of the Council's application of section 14(1) of the FOIA to his requests for information, the complainant asserted that "Henbury Parish Council would not need to make these requests if the Council had disclosed all the relevant information to the wider public and the Parish Council. The Parish Council's other requests are in relation to air pollution, traffic figures, traffic accident information, and highway adjustment information".
20. The Commissioner decided that the focus of her investigation would be to determine whether the Cheshire East Council is entitled to rely on section 14(1) of the FOIA to refuse to comply with the complainant's requests for information.

### **Reasons for decision**

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21. Since making its decision to apply section 14(1) to the complainant's requests, the Council has reviewed that decision and has advised the Commissioner that it now considers the requests should have been considered under the EIR and refused in reliance on Regulation 12(4)(b).
22. The Commissioner acknowledges the Council's reappraisal of this matter. In the Commissioner's opinion, in his requests 1, 2 and 4, the information which the complainant seeks is material which meets the interpretation of environmental information provided by Regulation 2 of the EIR: It is information which concerns the state of the elements of the environment, and matters such as administrative measures and

plans which will affect or likely to affect the elements of the environment.

23. The information which the complainant seeks in his request 3 falls to be considered under the subject access provisions of the Data Protection Act, on the grounds that it is the complainant himself who is focus of that information.
24. In consequence of the above, the Commissioner has decided that she should consider the Council's application of Regulation 12(4)(b) to the complainant's requests 1, 2 and 4 which are set out above.

### **Requests 1, 2 and 4**

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

25. 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.
26. 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.
27. A request can be manifestly unreasonable for two reasons: Firstly where it is vexatious and secondly where the public authority would incur unreasonable costs or where there would be an unreasonable diversion of resources.
28. There is no definition of the term "vexatious" in the Freedom of Information Act, however the issue of vexatious requests has been considered by the Upper Tribunal in the case of *The Information Commissioner and Devon County Council v Mr Alan Dransfield (GIA/3037/2011)*. In the Dransfield case the Tribunal concluded that the term could be defined as "manifestly unjustified, inappropriate or improper use of formal procedure." The Tribunal identified four factors likely to be relevant in vexatious requests:
  - The burden imposed by the request on the public authority and its staff
  - The motive of the requestor
  - Harassment or distress caused to staff
  - The value or serious purpose of the request.

29. The Upper Tribunal's decision established the concepts of "proportionality" and "justification" as being central to any consideration of whether a request for information is vexatious.
30. The key to determining whether a request is vexatious is a consideration of whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear it is necessary to weigh the impact of the request on the public authority against the purpose and value of the request. To do this a public authority must be permitted to take into account wider factors associated with the request, such as its background and history.

*The Council's representations to the Commissioner*

31. The Council's application of Regulation 12(4)(b) is done so on the grounds that it considers the requests to be manifestly unreasonable. To support its application of this exception, the Council has provided the Commissioner with information on the background and history of those requests which it believes is relevant to the Commissioner's consideration of this complaint.
32. The Commissioner acknowledges that the background and history information which the Council has provided is its own version and interpretation.
33. The Council informed the Commissioner that the complainant is a member of Henbury Parish Council. It says that the majority of his requests are connected in some way to planning applications which concern The Broken Cross area of Macclesfield.
34. Since June 2017, and to the date of his complaint to the Commissioner, the Council has received 22 information requests from the complainant, together with 13 Complaints, MP's enquiries or enquiries made to its Chief Executive.
35. Additionally, the Council has also received a large volume of informal correspondence from the complainant and has had a number of meetings and telephone conversations with him about these matters.
36. The Council has provided the Commissioner with detailed chronologies which illustrate the complainant's request history and his complaints.
37. In the Council's opinion, the complainant's requests initially had significant value and purpose. This is because they related to information about planning applications which would affect the parish he represents and lives in.

38. However, a point was reached where the volume of requests in relation to these matters demonstrated that the complainant's interest has become obsessive.
39. The Council points out that the complainant's requests have become more frequent and through them he is seeking increasingly more and more detail. The Council has advised the Commissioner that, on receiving its responses, the complainant increasingly challenged the accuracy of their contents and he repeatedly asked for the same information.
40. The Council asserts that the complainant's requests have become unreasonably persistent and obsessive. To illustrate this, the Council has referred the Commissioner to one request which concerned its release to the complainant of a calendar appointment. Following that release of information the complainant asked for the minutes of that meeting on at least four occasions despite him being advised, by virtue to a response to a separate EIR request, that the meeting had not been minuted.
41. The Council has advised the Commissioner that the complainant has exhausted its complaints process and he has additionally submitted a complaint to the Local Government Ombudsman, apparently in an attempt to obtain the minutes referred to above.
42. The complainant has also posted details of the calendar appointment on to the 'Save Macclesfield Greenbelt' Facebook page, where he and others have implied that officers have been culpable in some form of wrongdoing at that meeting.
43. The Council has provided the Commissioner with other examples of the obsessive and persistent nature of the complainant's requests and correspondence. It points out that these examples are only from one of the cases submitted by the complainant, but provide a flavour of the nature and persistence of correspondence the Council has received.
44. Based on its past experience, and as a result of the complainant's persistence in corresponding and in making requests for information, the Council has now taken the decision to refuse to answer any further requests from the complainant which relate to planning applications in this area.
45. The Council considers the complainant's requests to have imposed a significant burden on the authority. Nevertheless, the Council points out that it has continued to answer his requests for information where they relate to other topics.
46. The Council has advised the Commissioner that it has considered the Commissioner's guidance relating to manifestly unreasonable requests

and the application of Regulation 12(4)(b). It points out that, "The purpose of the exception is to protect public authorities from exposure to a disproportionate burden or an unjustified level of distress, disruption or irritation, in handling information requests." The Council also emphasises the need to consider proportionality before deciding to refuse a request as vexatious.

47. The Council says that it has considered the impact of the complainant's request on the authority, and has balanced this against the purpose and value of the request. It acknowledges the public interest in relation to the impact of the proposed planning applications and says that it has no doubt that the complainant's requests had a serious purpose when they began. It also recognises that a significant number of residents may be affected by the proposed developments.
48. That said, the Council believes a point has now been reached where the complainant's requests have become exhaustive: They have drifted away from requesting information which could reasonably be considered as having purpose and value to his concerns.
49. The Council believes that the complainant now appears to be trying to uncover perceived wrongdoing by Cheshire East Council and its staff, and his requests have become more progressively obsessive, personal, repetitive and persistent in nature.
50. The Council believes that, although the complainant's requests might result in a small degree of further information being disclosed into the public domain, no matter how much information is released, it will not be enough to satisfy the complainant. The Council therefore asserts that continuing to respond to the complainant on this topic will have an unjustified and disproportionate effect on Cheshire East Council and its staff, where each response only serves to trigger further requests.
51. Taken cumulatively, the Council asserts that the complainant's requests have taken an inordinate amount of time to respond to. Indeed, the Council says that, "It is not only the work involved in responding to the information requests themselves that presents a significant burden – [the complainant] constantly questions responses provided to him. He appears to look for holes in the information, and on several occasions has implied that information has been doctored, redacted or withheld inappropriately".
52. In the Council's opinion, the complainant's correspondence makes clear that he questions the professional competence or integrity of the officers involved in these planning applications. And it points out that there are more suitable means available to the complainant for him to raise

concerns relating to this matter, rather than using the EIR process to carry out his own investigations.

53. The Council points out that the applications, to which the complainant's requests relate, are subject to statutory public consultation, and will be submitted to the Strategic Planning Board in due course.
54. The Council' says that its planning service has sought to address and resolve the complainant's concerns on numerous occasions and it has provided the Commissioner with an email, referred to in Request 2 above, which the Council asserts shows that the complainant's concerns, and those of the Parish Council, have been given due consideration.
55. The email which the Council has referred to says, "...given the comments from the Parish and third parties highways undertook a 'sense check' of all the information for certainty. However this has revealed a possible issue in terms of pedestrian facilities at the proposed junction such that it requires further investigation".
56. The Council's characterisation of the complainant's enquiries is that they have become more personal and have caused an unjustified level of distress, disruption or irritation to its staff. The Council has advised the Commissioner that one of its officers has complained of feeling personally harassed by the complainant's obsessive and intrusive lines of enquiry.
57. To support its position, the Council has provided the Commissioner with screen prints of the 'Save Macclesfield Greenbelt' group's Facebook page. It points out that the complainant is a member and regular contributor to that page, and information released in response to requests is often published on it. The Council says, "Whilst this is not a problem in itself, many of the comments on this page appear to question the integrity or professional competence of individual officers".
58. Additionally, the Council has drawn the Commissioner's attention to comments made by the complainant under the hashtag '#windupwednesday', which the Council contends demonstrates his deliberate intention to cause annoyance when requesting information
59. In the complainant's request number 2, the Council's response to the complainant stated, "...there are 4 junctions at Broken Cross, and clearly [name redacted] is being economical with the information".
60. The Council has explained that this request was not logged as a formal request under the EIR because it appeared to be a straightforward question. It was therefore treated as 'business as usual' correspondence and the Council replied to the complainant on 17 April 2018.

61. On 9 May 2018 the complainant contacted the Commissioner after receiving the Council's 'business as usual' reply.
62. Putting this correspondence in context, the Council has explained that the complainant emailed the Council on 28 March, 17 April and 30 April about the junctions at Broken Cross. He also emailed the Council FOI team separately on 1 April, 4 May 8 May about the same matter.
63. The Council asserts that this illustrates the complainant's approach to his correspondence, where he has emailed several different people in quick succession and, in doing so, has caused confusion and duplication of effort.
64. The Council has explained its response as follows:

"The response I gave was a simple one to the question which he asked which was which of the junctions was affected. My answer was stated as the Broken Cross roundabout/junction – because that was the area of concern.
65. In the Council's reading of the complainant's correspondence, the complainant appears to have taken the view that the roundabout is four 'separate' junctions. This is not how the Council views it. If the Council was to be specific, it would have referred to which of the arms of the roundabout, rather than the 'junction'. However, back in April it wasn't clear if there was a problem with a specific 'arm' in any event.
66. The Council has informed the Commissioner that the request, referred to above as request 4, was not in fact made by the complainant. The Council says that it was submitted under another name via WhatDoTheyKnow.com.
67. Although the Council has no concrete evidence to support its view, it strongly suspects that the name used is either a pseudonym of the complainant's, or that the request was submitted on his behalf.
68. The Commissioner has noted the Council's position in respect of request 4, but given her decision above and the fact that the complainant saw fit to include request 4 in his complaint, she is content that this matter has now been dealt with.
69. The Commissioner notes that, while the request for the Jacobs report was initially refused under Regulation 6(1)(b) it has been disclosed to the person whose name appears on the WhatDoTheyKnow.com website. Additionally, the Commissioner understands that the complainant was advised that a copy of the document was available for him to download.

*The Commissioner's considerations*

70. The Commissioner has considered the Council's representations in respect of its application of Regulation 12(4)(b) to the complainant's requests. She has noted the persistent nature of the complainant's correspondence and its primary focus being the planning applications identified in his requests.
71. It is apparent to the Commissioner that the complainant seeking information which will show, or could be used to show, that the Council has failed to properly consider the planning applications described in the complainant's request. It is also conceivable that the complainant is seeking information to uncover some form of fraud or wrong-doing on the part of the Council which would put its decisions into question.
72. The Council's evidence corroborates the degree to which the complainant has submitted his information requests together with his associated correspondence. That evidence is sufficient for the Commissioner to find that, when considered together, the complainant's requests 1, 2 and 4 are manifestly unreasonable.
73. In the Commissioner's opinion, the complainant's requests have placed an unreasonable burden on the Council which has resulted in an unwarranted use of the Council's resources. The Commissioner is satisfied that the complainant's requests engage the exception to disclosure provided by Regulation 12(4)(b).

*The public interest test*

74. Having determined that Regulation 12(4)(b) is engaged, the Commissioner is required to consider whether the balance of the public interest in maintaining the exception outweighs the public interest in responding to the complainant's requests.
75. The Commissioner will always give weight to factors which favour the disclosure of information which would increase the public's understanding of the actions taken by a public authority, and of the processes by which it makes its decisions. Such disclosure of information will generally increase transparency and provide greater accountability of public authorities.
76. The Commissioner acknowledges that the complainant's requests relate to legitimate concerns held by the complainant and the Parish Council, which will be affected by the proposed developments. She also acknowledges that a significant number of residents may be affected by these proposed developments.
77. In this case, it is important to note that the complainant's requests are focused on three planning applications which, at the time the complainant submitted his requests, were being considered by the

Council. This means that the Council was required to follow well-established procedures and to publish a great deal of information on the planning portal of its website.

78. In the Commissioner's experience the published information generally serves to satisfy the public interest associated with the provision of relevant information. She also notes that, during the time for consulting on planning matters, the public is given proper opportunity to comment and make objections.
79. The Commissioner cannot ignore the significant public resources which the Council has put into responding to and satisfying the complainant's many requests, complaints and correspondence about the planning applications.
80. The Commissioner recognises the opportunities which exists for objectors to planning applications to make their objections known. Such opportunities include seeking a Judicial Review of the Council's decisions, where those decision may have been made will without following proper procedure.
81. It is clear to the Commissioner that complying with the complainant's requests would require the Council to incur further significant costs and this would unreasonably divert its resources from other core business areas.
82. In the Commissioner's opinion the disproportionate burden of the complainant's requests has sufficiently to tilted the balance of the public interest towards maintaining the Council's reliance on Regulation 12(4)(b) exception.
83. The Commissioner's decision is that the Council has correctly applied Regulation 12(4)(b) of the EIR to the complainant's requests numbered 1, 2 and 4 above.

### **Request 3**

84. The Commissioner has considered the nature of the information which the complainant has asked for in his request number 3. She considers the focus of that information is the complainant himself: The information he has requested in request 3 concerns the identities of those persons who have allegedly been involved in blocking his requests for information in respect of planning applications 17/4277M and 17/4034M, and allegedly in preventing the complainant from writing to his MP.
85. The fact that the complainant is the focus of the requested information, leads the Commissioner to conclude that his information request should

have been dealt with under the subject access provisions of the Data Protection Act 1998, rather than under the FOIA or EIR.

## **Other matters**

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86. The Council's refusal notice of 27 March makes reference to section 3(2)(a) of the FOIA.
87. Notwithstanding the Commissioner's decision in respect of Regulation 12(4)(b), the Commissioner asked the Council to explain why it concluded that, although it physically holds the information the complainant has requested, it does not hold this information for the purposes of the Act.
88. The Council has explained that the emails it is referring to were sent to the councillors named in the complainant's request in their capacity as Ward Councillors. As such, those email exchanges were made in the councillors' capacity as a Ward Councillor and therefore they fall outside the ambit of the EIR.
89. The Commissioner's guidance confirms the following:
90. "The use of the phrase 'in the authority's possession' could indicate that the scope of what is held under the EIR is much wider than under FOIA, as this may include information that is not held for the authority's own purposes. However, the Commissioner considers that information is not in the public authority's 'possession' if it is not being held to any extent for its own purposes. This means, for example, that information which is simply stored by an authority on behalf of someone else is not "held" for the purposes of the EIR."
91. In this case, the information contained in the councillors' email exchanges, in respect of their ward councillor role, does not relate to Council business. The emails may be stored on the Council's email system, but they are only stored on the Councillors' behalf. The Council has assured the Commissioner that it does not hold the information for its own purposes.

**Right of appeal**

92. 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)

93. 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.
94. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**