

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

Decision notice

Date: 2 November 2020

Public Authority: West Berkshire Council
Address: Council Offices
Market Street
Newbury
RG14 5LD

Decision (including any steps ordered)

1. The complainant requested from West Berkshire Council (the Council) information in relation to a local football ground. The Council refused to comply with the request under regulation 12(4)(b) of the EIR (manifestly unreasonable request).
2. The Commissioner's decision is that the Council correctly applied regulation 12(4)(b) of the EIR.
3. The Commissioner does not require the Council to take any steps to ensure compliance with the legislation.

Request and response

4. On 18 October 2019 the complainant wrote to the Council and requested information in the following terms:

"Please can you provide me with all correspondence and reports associated with inspections, site surveys and costings undertaken by

the Council and any of its subcontractors or consultants at the Faraday Road football ground since it was closed in June 2018?"

5. On 15 November 2019, the Council responded, informing the complainant that it was necessary to extend the time to respond by an additional twenty working days.
6. The Council provided the complainant with a substantive response on 29 November 2019. It refused to provide the complainant with the information requested, stating that due to his numerous and similar requests previously submitted, the Council considered that this request was manifestly unreasonable. It cited Regulation 12(4)(b) of the EIR as its basis for this refusal.
7. The complainant wrote to the Council on 4 December 2019 maintaining that the request above was different from previous ones. Therefore, he asked the Council to conduct an internal review.
8. The Council provided the complainant with the outcome of its internal review on 3 January 2020. It did not change its position.

Scope of the case

9. The complainant contacted the Commissioner on 27 January 2020 to complain about the way his request for information had been handled.
10. The analysis below considers whether the Council was entitled to rely on regulation 12(4)(b) of the EIR to refuse to comply with the request.

Reasons for decision

Is the information environmental information?

11. Information is "environmental information" and must be considered for disclosure under the terms of the EIR rather than the FOIA if it meets the definition set out in regulations 2(1)(a) to 2(1)(f) of the EIR.
12. The Commissioner considers that the information in this case can be classed as environmental information, as defined in regulation 2(1)(c) of the EIR. This provision provides that any information on measures such as policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect the elements or factors of the environment listed in regulation 2(1)(a) and 2(1)(b) will be environmental information. One of the elements listed under 2(1)(a) is land.

13. The request in this case is for information concerning the redevelopment of land (on which Newbury football ground was sited). The Commissioner considers that the request therefore relates to a measure as defined in regulation 2(1)(c) of the EIR which would or would be likely to, affect the elements described in 2(1)(a), namely land. The Commissioner is therefore satisfied that the request was for environmental information, and that the request fell to be dealt with under the EIR.
14. Having concluded that the requested information is environmental information, and consequently covered by the EIR, the Commissioner has gone on to consider the application of regulation 12(4)(b).

Regulation 12(4)(b) of the EIR

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

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;

16. Regulation 12(4)(b) can be applied:

- when the request is vexatious; or
- when the cost of compliance with the request is too great.

17. In this case the Council confirmed that it was relying on regulation 12(4)(b). The Council's arguments in support of its position indicated that it considered the request to be vexatious. In practice there is no material difference between a request that is vexatious under section 14(1) of FOIA and a request that is manifestly unreasonable on vexatious grounds under the EIR.¹

18. The Commissioner has previously published guidance on vexatious requests². 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

¹ <https://ico.org.uk/media/for-organisations/documents/1615/manifestly-unreasonable-requests.pdf>

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

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.

19. While section 14(1) of the FOIA removes the duty to comply with the request, regulation 12(4)(b) of the EIR explicitly requires a public authority to apply a public interest test (in accordance with regulation 12(1)(b)) before deciding whether to maintain the exception. The Commissioner accepts that public interest factors, such as proportionality and the value of the request, will have already been considered by a public authority in deciding whether to engage the exception, and that a public authority is likely to be able to “carry through” the relevant considerations into the public interest test.

The complainant's position

20. The complainant disagrees with the Council's refusal to comply with his request. On behalf of the Newbury Community Football Club, the complainant argued that it is in the public interest that the Council disclose the information requested.

The Council's position

21. The Commissioner wrote to the Council requesting a submission in respect of a number of questions relating to the relevant matters raised by the complainant. The questions were focused on the factors that the Council took into account when it decided to refuse to comply with the complainant's request for information.
22. The Council explained that it took into account the Commissioner's guidance on the application of regulation 12(4)(b) of the EIR and previous similar cases, when it issued the refusal notice in response to the complainant's present request.
23. The Council stated that it was aware that the EIR is applicant blind but in the circumstances of this case it had to take into account the purpose and value of the request as well as the context and history in which the request was made. According to the Council it was necessary to do so, because the same complainant previously submitted requests about the same matters, to which the Council had already responded.
24. The Council claimed that due to numerous requests and complaints submitted about that specific location by the same individual, its officers *“have spent a considerable amount of time complying with them,*

making a large amount of information available to [the complainant] and by publishing information on the Council's website."

25. The Council asserted that complying with the present request that covers all correspondence, inspection reports, site surveys and costings since June 2018, when the football ground was closed, would place a considerable burden on the Council's members of staff and their capacities.
26. The Council maintains that the complainant *"is pursuing a personal interest in the site. Consequently, he is using the EIR as a means to express continued dissatisfaction at a particular decision by repeatedly raising matters that in the Council's opinion have already been addressed."*
27. Attached to its response to the Commissioner's investigation letter, the Council provided the Commissioner with the copies of the complainant's previous requests and the responses provided by the Council.

The Commissioner's view

28. Firstly, the Commissioner notes that there are many different reasons why a request may be considered vexatious, as reflected in the Commissioner's guidance. There are no prescriptive 'rules', although there are certain characteristics and circumstances that assist in making a judgment about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed 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.
29. 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.
30. The Commissioner has carefully examined the submissions of both parties, the documents enclosed and the arguments put forward. The Commissioner understands that the complainant and the Council have been exchanging correspondence in relation to the subject matter of this complaint for at least two years prior to the above information request.

Since 30 August 2018, the complainant has submitted five information requests, two of which have been internally reviewed. From the evidence available, the Commissioner notes that the Council has in some cases provided the complainant with the information sought and explained why it had made redactions when it considered necessary. It also provided clarifications when it did not hold the information sought and offered to arrange on-site inspection for some information that was not considered feasible to share electronically.

31. The Commissioner notes that, although the number of information requests submitted by the complainant during a recent period of time is not extensive in itself, when considered with the frequent correspondence and the voluminous nature of other material generated following the complainant's approach to the Council, it can be considered that the cumulative impact may impose an unreasonable burden on the Council's administrative resources. A summary of the previous information requests submitted by the complainant to the Council can be found as an annex to this decision notice.
32. In addition, the Commissioner notes that the complainant has also made a complaint to the Local Government & Social Care Ombudsman (the Ombudsman) against the Council's decision to redevelop the football ground in question. The complainant claimed that the Council disposed of the stand at the football ground without following the statutory procedure set out in the Localism Act 2011. The Ombudsman found that the Council was not at fault.
33. Taking into account the sequence of the requests and the historical background of the disagreements between the complainant and the Council about the use of the football ground, the Commissioner does not consider that compliance with the present information request would contribute to resolving the existing issues between the parties involved. Judging from the previous patterns it would be likely to lead to additional information requests that may amount to an unnecessary burden and place a disproportionate strain on the resources of the public authority.
34. The Commissioner considers that complying with the complainant's request would be unreasonably burdensome and an unwarranted use of the Council's resources. Her conclusion is that the request was vexatious and manifestly unreasonable and, therefore, that regulation 12(4)(b) was engaged.

The public interest test

35. Regulation 12(1)(b) provides that:

...a public authority may refuse to disclose environmental information requested if –

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

36. In deciding to refuse the request as vexatious, the Council explained that it took into account all factors in favour of complying with the request and refusing it. The Council stated it appreciates that there are public interest arguments in favour of disclosure of the information requested, such as promoting its transparency and accountability, greater public awareness and understanding of environmental matters, particularly on this particular decision to redevelop the area in question. Nevertheless, the Council maintains that the vexatious nature of the request and unjustified level of disruption the request would place on the authority tips the balance of the public interest factors in favour of maintaining the exception provided under regulation 12(4)(b).
37. The Commissioner appreciates that the requests relate to matters that are of concern to the complainant, and that some of these issues may have direct impact on the complainant's community. The disclosure of information may, therefore, allow the complainant to better understand certain aspects and the reasons behind the Council's decision to redevelop the area. It would also enable exchanges of views and opinions of individuals who live in the area, thus would increase public participation in decision-making process.
38. However, the Commissioner also considers that, taking into account the background of the request, the Council has already provided substantial information in respect of the issues raised but has not been able to satisfy the complainant and the group that he represents.
39. With the above in mind, the Commissioner finds that to provide the amount of information requested by the complainant in light of what has been disclosed previously, would impose a burden on the Council that would be disproportionate compared to the benefit that the general public would receive.
40. Moreover, the Commissioner notes again that the Ombudsman did not find the Council at fault. For these reasons, the Commissioner concludes that the public interest in the maintenance of the exception outweighs the public interest in disclosing the information.
41. Regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions. As stated in the Upper Tribunal decision *Vesco v Information Commissioner (SGIA/44/2019)*, "If application of the first

two stages has not resulted in disclosure, a public authority should go on to consider the presumption in favour of disclosure..." and "the presumption serves two purposes: (1) to provide the default position in the event that the interests are equally balanced and (2) to inform any decision that may be taken under the regulations" (paragraph 19).

42. As set out above, in this case the Commissioner's view is that the balance of the public interests favours the maintenance of the exception, rather than being equally balanced. This means that the Commissioner's decision, whilst informed by the presumption provided for in regulation 12(2), is that the exception provided by regulation 12(4)(b) was applied correctly.

Other matters

43. Although not forming part of the formal decision notice the Commissioner uses "Others Matters" to address issues that have become apparent as a result of a complaint or her investigation of that complaint.
44. The Commissioner notes that, in his complaint form and during the course of this investigation, the complainant presented arguments about the Council's failure to comply with other legislation and its policies and strategies. Whilst there may be other relevant bodies where these concerns may be addressed, the Commissioner did not take them into account, since they fall outside the remit of her responsibilities.
45. The complainant also put forward a general remark, complaining about delays in responding to previous information requests and incomplete information provided when the Council responded to his previous requests. The Commissioner has focused this investigation solely on the handling of his request of 18 October 2019. The Council handled this request in compliance with the statutory requirements of the EIR concerning the deadlines for response and internal review.
46. As the concerns about the handling of the previous requests were not raised with her at the time of them, the Commissioner has treated them as outside the scope of the present investigation.

Right of appeal

47. 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@justice.gov.uk

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

48. 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.
49. 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

Ben Tomes
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex

50. The previous information requests submitted by the complainant to the Council:

- i. **Ref. Fol/2018/964** submitted on 30 August 2018 requesting information consisting of all communication that led to a planning application to demolish the stand at Newbury Football Ground. The Council responded on 4 October 2018, providing some information but also redacting some of the information based on the exceptions provided in regulation 12(4)(e) and regulation 13 of the EIR.
- ii. **Ref. Fol/2018/1143** submitted on 15 October 2018 requesting evidence about the ownership of the stadium's stands. The Council responded stating that the requested information was not held by it in recorded form and provided additional explanations on this matter. The complainant requested an internal review on 5 December 2018. The Council provided the outcome of its internal review on 4 January 2019. It did not change its position but provided additional clarifications.
- iii. **Ref. Fol/2019/516** submitted on 30 May 2019. This request was comprised of eight parts, all focused on the process of redeveloping the football ground. The complainant sought information in relation to the business case justifying the redevelopment of this site, the Council's strategies and policies, consultation process, costs, budget, its business plan etc. The Council responded on 4 June 2019. It provided the information it held falling within the scope of the request, explained that some information was not held and sought further clarifications from the complainant in relation to some parts of the request that the Council considered to be unclear. The complainant requested an internal review. In July 2019, the Council provided the outcome of its internal review. The complainant was provided with some additional information in response.
- iv. **Ref. Fol/2019/771** submitted on 9 July 2019 requesting all contractual documentation signed between 2005 and 2007 inclusive involving the football ground at Faraday Road, Newbury between West Berkshire Council and its tenants and/or licensees. The Council responded on 4 September 2019. It provided the complainant with the information it held within the scope of the request, with some redactions of personal data relying on regulation 13 of the EIR.

- v. **Ref. FoI/2019/997** submitted on 5 September 2019 requesting all contractual documentation (e.g. licences and leases) signed between 2008 and 2010 inclusive involving the football ground at Faraday Road, Newbury between West Berkshire Council and its tenants and/or licensees. The Council responded on 4 October 2019. It provided the complainant with the information it held within the scope of the request.