



**IN THE FIRST-TIER TRIBUNAL  
(GENERAL REGULATORY CHAMBER)  
[INFORMATION RIGHTS]**

**EA/2015/0138**

**ON APPEAL FROM:**

**Information Commissioner's Decision Notice: FS50557309  
Dated: 3 June 2015**

**Appellant: CHRIS HAWES  
Respondent: THE INFORMATION COMMISSIONER**

**Date of hearing: 11 November 2015**

**Date of Decision: 30 November 2015**

**Date of Promulgation: 15 December 2015**

**Before  
Suzanne Cosgrave  
Narendra Makanji  
Annabel Pilling (Judge)**

**Subject matter:**

EIR – Regulation 5(1) – whether the information is held  
EIR – Regulation 12(4)(b) - manifestly unreasonable  
EIR – Regulation 13 - personal data

**Representation:**

For the Appellant: Chris Hawes

For the Respondent: Nicholas Martin

### **Decision**

For the reasons given below, the Tribunal refuses the appeal and upholds the Decision Notice of 3 June 2015.

### **Reasons for Decision**

1. This is an appeal against a Decision Notice issued by the Information Commissioner (the 'Commissioner') dated 3 June 2015.
2. The Decision Notice relates to four requests made by the Appellant to Bradfield Parish Council (the 'BPC') relating to a decision in respect of the creation of a footpath in Steam Mill Road, Bradfield, Essex.
3. A public authority that holds environmental information is required to make it available upon request (reg.5(1) EIR). Reg.12 EIR provides as follows:

*"(1) Subject to paragraphs (2), (3), and (9), a public authority may refuse to disclose environmental information requested if-*

*(a) an exception to disclosure applies under paragraphs (4) or (5); and*

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

*(2) A public authority shall apply a presumption in favour of disclosure.*

4. "Environmental Information" is defined in reg.2(1) EIR as:

*a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites*

*including wetlands, coastal and marine area, biological diversity and its components, including genetically modified organisms and the interaction among these elements;*

*b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges, and other releases into the environment referred to in (a);*

*c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements.”*

5. There is no dispute that the information requested is environmental information and that the EIR is the appropriate access regime in this case.

6. The Requests for environmental information from the Appellant were as follows:

*Request 1 – 4 September 2014*

*“...forward me the details of all the documents and information of which you all received from ECC emailed to you from your Clerk regarding the proposed footpath in Steam Mill Road.”*

*Request 2 – 23 September 2014*

*(1) How many people that would be directly affected by the footpath in the Steam Mill Road boundary were sent copies of the letter from ECC Highways in July 2013.*

*(2) How many residents responded directly to you or your office to comment on the drawings?*

*(3) Do you have a formal document that confirms the*

*outcome of a resident consultation held in partnership with Essex County Council?*

*(4) Can you please tell me when the most recent set of letters that were sent to Bradfield Parish Council from Essex County Council regarding the footpath and were those letters intended for residents?*

*(5) Can you please tell me the dates that Essex County Council and Essex Highways Officers attended the Bradfield Parish Council meeting to discuss the decision to move forward with the proposals?*

*Request 3 – 1 October 2014*

*“With reference to the footpath meeting on the 1 October 2014. A comment was made by [named Councillor] that the footpath was on the minutes/agenda some 6 years ago regarding the consultation taking place. Could you forward the Graphic evident and corresponds relating to this please.”*

*Request 4 – 12 October 2014*

*“Would you please forward the internal emails between you and Bradfield Parish Councillors, TDC and ECC and responses regarding Steam Mill Road footpath between October 2013 to present date.”*

7. In respect of Request 1, the BPC confirmed it held some information falling within the scope of the request, namely some draft letters upon which it had been invited to comment by Essex County Council ('ECC') prior to ECC sending these to the individuals identified. The BPC was then advised by ECC that these letters contained errors and asked it not to respond. The BPC considered that these letters constitute personal data of their intended recipients and that disclosure would

contravene the first data protection principle. It refused to disclose the letters relying on the exception in reg.13 EIR.

8. The Commissioner agreed that disclosure of the letters would be unfair to the intended recipients as they would have no reasonable expectation that their correspondence from the ECC would be put in the public domain by the BPC.
9. In respect of Request 2, this was a 5 part request for information. The BPC answered each part; it did not hold information about how many people were sent letters from ECC in July 2013, no residents responded directly to the BPC to comment on the drawings, the BPC did not have a formal document confirming the outcome of a resident consultation held in partnership with ECC, draft letters intended for residents were sent to the BPC for comment (these are the same letters as in Request 1) and the BPC would need to check the dates ECC and Essex Highways officers attended the BPC meeting. In respect of the last, the BPC suggested that the Appellant ask ECC directly. The Commissioner, applying the civil test, concluded that, on the balance of probabilities, the BPC does not hold any further recorded information relevant to this part of the request.
10. In respect of Requests 3 and 4, the BPC refused to comply with these requests on the basis that they are vexatious. The Commissioner concluded that the BPC was entitled to rely upon the exception in regulation 12(4)(b) EIR, which allows a public authority to refuse to comply with a request where it is deemed to be manifestly unreasonable. In reaching this conclusion, the Commissioner had regard to the context and history of the Appellant's dealings with the BPC, including the information that had been provided to the Appellant, and the burden on the BPC.

### **The appeal to the Tribunal**

11. All parties agreed that this was a matter that could be dealt with by way of a paper hearing.

12. The Tribunal was provided in advance of the hearing with an agreed bundle of material, and written submissions from the parties. We also received a small closed bundle containing the letters falling within Request 1. These could not be provided to the Appellant as to do so would defeat the purpose of the appeal. We cannot refer to every document and submission but have had regard to all the material when considering the issues before us.
13. The Appellant seeks a reversal of the Commissioner's decision and has provided a series of written submissions and other documents in support of his appeal. One of these, entitled "*character reference*", comments upon the Appellant's English being "*difficult to understand at times*". We found that to be the case when considering some of the documents in this case.

### **The Issues for the Tribunal**

#### Request 1

14. The Appellant does not challenge the Commissioner's decision that the letters are the personal data of the intended recipients nor that disclosure would breach the first data protection principle.
15. Regulation 13 EIR provides an exception to the duty to make environmental information available upon request if the information is personal data of which the applicant is not the data subject and where disclosure of the personal data of third parties would contravene one of the data protection principles set out in Schedule 1 of the Data Protection Act 1998 (the "DPA").
16. The data protection principles regulate the way in which a "data controller" (in this instance, the BPC) must "process" personal data. The word "process" is defined in section 1(1) of the DPA and includes:

*"disclosure of the information or data by transmission, dissemination or otherwise making available."*

17. The first data protection principle provides:

*Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –*

- (a) at least one of the conditions in Schedule 2 is met, and*
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.*

18. We have seen these letters. We are not satisfied that the letters at page 13 or page 21 fall within the definition of personal data. A short closed annex to this decision sets out our reasons. The BPC is not entitled to refuse to comply with request for this environmental information on basis of reg. 13 EIR. There may be another exception or exceptions which apply. We direct the BPC to either disclose or to issue an appropriate refusal notice.

19. In respect of the remainder of the withheld information, we agree that these are the personal data of the intended recipients. There is no suggestion that any of the conditions in Schedule 2 is met such that would make disclosure of their personal data fair. We considered whether parts of the letters could be redacted. We consider that the information contained within the body of the letters contains sufficient details to lead to identification of individuals meaning that redaction is not possible in this case.

20. The Appellant suggests in his grounds of appeal that he never requested the letters themselves only the number of those who had received the letter. This is plainly wrong.

21. We therefore dismiss the appeal in respect of Request 1.

#### Request 2

22. This five part request the Appellant submitted to the BPC contains a number of matters which it would have been more appropriate to direct to the ECC. The BPC should therefore have transferred the request

under reg.10(1)(a) EIR or supplied the Appellant with the name and address of the ECC under reg.10(1)(b) EIR.

23. The Appellant's position appears to be that this request was prompted by concerns that a consultation which officials thought had taken place had not in fact taken place. The BPC has confirmed that it does not hold a formal document confirming the outcome of a resident consultation.

24. We have seen recent correspondence with new or acting clerk to the BPC<sup>1</sup>. This was received after the time set for providing material to the Tribunal. There is a suggestion within that correspondence that there is an intention to examine the hard drive of a laptop used by the previous clerk to ascertain if there is any information held or whether information has been erased. The BPC view is that the laptop appears to have never been used. The Appellant suggests that this is evidence that the former Clerk or BPC has concealed information but there is no evidential basis upon which we could reach such a conclusion. This does not take the matter further as far as this appeal is concerned; at the time of the Commissioner's decision the BPC confirmed that it did not hold this information and there is no evidence before us that the BPC does, in fact, hold further information falling within the scope of this request.

#### Requests 3 and 4

25. The large part of this appeal was concerned with Requests 3 and 4.

26. Reg.12 EIR provides as follows

*“(1) Subject to paragraphs (2), (3), and (9), a public authority may refuse to disclose environmental information requested if-*

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<sup>1</sup> There was an election in May 2015. The previous clerk resigned and a temporary clerk began acting in August 2015.



*(a) an exception to disclosure applies under paragraphs (4) or (5);  
and*

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

*(2) A public authority shall apply a presumption in favour of disclosure.*

*(3)...*

*(4) For the purposes of paragraph (1)(a), a public authority may refuse  
to disclose information to the extent that-*

*(a)...*

*(b) the request for information is manifestly unreasonable.*

27. Although there are some differences between the structure of reg.12(4)(b) EIR and s14(1) FOIA (vexatious request) it has been accepted by the Upper Tribunal and Court of Appeal that there is little difference in practice when considering whether a request is “vexatious” or “manifestly unreasonable”.

28. Neither term is further defined in the legislation. The Upper Tribunal<sup>2</sup> has considered the approach which should be taken when reaching “*what is ultimately a value judgment as to whether the request in issue is vexatious is the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA*”.

29. It cautioned against a too rigid approach to deciding whether a request is “vexatious” or “manifestly unreasonable”; it is important to remember that Parliament expressly declined to define the term. It did not purport to lay down a formulaic checklist or identify all the relevant issues, but suggested four broad issues or themes as relevant to the determination

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<sup>2</sup> Information Commissioner v Devon County Council and Alan Dransfield [2012] UKUT 440 (AAC) (‘Dransfield’)

of whether a request is “*vexatious*” or “*manifestly unreasonable*” - i) the burden on the public authority and its staff, ii) the motive of the requestor, iii) the value or serious purpose of the request and iv) any harassment or distress of or to staff.

30. In *Dransfield*, the Upper Tribunal emphasised the importance of viewing a request in its context which means assessing the context and history of the particular request in terms of previous dealing between the individual requester and the public authority.

31. During the Commissioner’s investigation the BPC provided copies of correspondence between the Appellant and the BPC which illustrates that the Appellant would often follow up a response with further requests, enquiries or challenges, often without regard to the proportionality of the requests and the issues to which they related. These are provided to us in the agreed hearing bundle, and show that the issues pursued by the Appellant were not confined to the decision to create a footpath on the south side of Steam Mill Road.

32. The BPC is a small parish council with one employee, a clerk, who worked on a part time basis of around ten hours per week. The volume of correspondence from the Appellant has created a burden on the BPC in dealing with his various requests. Dealing with the Appellant’s various requests and follow up questions will inevitably have distracted the BPC from complying with its other statutory duties. We also consider that although the creation of a footpath within the parish will be of concern to the BPC, its involvement in what is essentially a planning issue for ECC is peripheral to the main duties of a parish council.

33. At some point after his complaint to the Commissioner, the Appellant has located copies of BPC meeting minutes which record the footpath being discussed in 2009 which he suggests is the information requested in Request 3. The BPC refused to comply with Request 3 on the basis that it was manifestly unreasonable, not because it did not

hold information or because the information was already available or because another possible exception to the duty to disclose was applicable. In any event, the Request was for “*the Graphic evident and corresponds*”, which we understand to be for evidence and correspondence, relating to the comment made about the consultation not the footpath *per se*. These minutes record that the footpath was mentioned not that there had been a consultation.

34. Having reviewed the history of requests and other correspondence, in our view the Appellant has made misplaced requests to the BPC which should have been directed to the agencies responsible for the decision to create the footpath. It may be that he has misunderstood the role a parish council can play in a planning or highway decision. In terms of the motive of the requestor, it appears that the Appellant wishes to challenge the decision to create a footpath in Steam Mill Road and suggests that the decision making process was flawed. He believes that the records held by the BPC will reveal this to be the case. He has already complained about the decision made by the Local Highway Panel on the basis of a flawed consultation procedure. This has been investigated by ECC which concluded on 3 April 2014 that there was no evidence of the correct procedures not being followed and that, in the light of no other objections on the scheme, it was not able to uphold his request for a further consultation on the matter. The Appellant was reminded that the final decision on implementing a scheme is taken by the Cabinet Member.

35. The information requested in Requests 3 and 4 would have very limited serious purpose or public value. The Appellant has already challenged the process with ECC. The BPC was not responsible for the decision to create the footpath on the south side of Steam Mill Road.

36. The BPC also sought to rely upon harassment or distress to staff. It provided a copy of a letter from a Councillor tendering her resignation and apparently naming the Appellant as a contributing factor. We do

not consider that we can, nor do we need to, reach a decision in respect of whether there has been harassment or distress caused as a result of the Appellant's actions. We are quite satisfied on a consideration of the unreasonable burden on a small parish council for information in respect of a decision that was not its to make against the history of the Appellant's correspondence with it, with no or little serious purpose or value, that each of these requests is manifestly unreasonable.

37. We agree with the Commissioner that the BPC has dealt with the Appellant in a proportionate manner given its resources and the nature of the issues in question. The Commissioner was correct to conclude that when considered in the light of the Appellant's sustained course of enquiries and complaints that the request was manifestly unreasonable.

38. The exception in reg.12(4)(b) EIR is therefore engaged.

39. The Commissioner submits that the public interest in disclosure is very limited and insufficient to outweigh the public interest in maintaining the exception given the background to these requests. We agree. The public interest in disclosure is limited to the Appellant and possibly other householders affected by decision in respect of the decision to create the footpath, although it appears that only the Appellant has taken any action. The decision was not made by the BPC. The significant public interest in ensuring that small public authorities do not spend disproportionate time and public money in dealing with manifestly unreasonable requests is far greater and therefore we agree with the Commissioner that the public interest in maintaining the exception outweighs any public interest in disclosure.

40. We therefore dismiss the appeal.

41. Our decision is unanimous.

30th November 2015