

## **Freedom of Information Act 2000 (Section 50) Environmental Information Regulations 2004**

### **Decision Notice**

**Date: 7 April 2008**

**Public Authority:** Stevenage Borough Council  
**Address:** Daneshill House  
Danestrete  
Stevenage  
Herts  
SG1 1HN

### **Summary**

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The complainant made a series of requests concerning the sale of Stevenage Borough Council's ("the Council") freehold interest in an area of land and the granting of planning permission for the site. The Council refused the requests on the basis that either the exclusion under section 14 of the Freedom of Information Act 2000 ("the Act") applied or, if the information could be deemed to be environmental, the exception under section 12(4)(b) applied under the Environmental Information Regulations 2004 ("the EIR"). The Information Commissioner ("the Commissioner") investigated and was satisfied that the Council was able to demonstrate that the requests had been correctly refused under 12(4)(b) of the EIR. The Commissioner also considered that the public interest in maintaining the exception in this case outweighed the public interest in disclosing the information.

### **The Commissioner's Role**

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1. The EIR were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Commissioner. In effect, the enforcement provisions of Part IV of the Act are imported into the EIR.

### **Background to the Complaint**

2. The area of land which is the general subject of the complainant's information requests to the Council was part owned by a company called Van Hage and Company (Holdings Limited). Van Hage leased the remainder of the site from the Council who owned the freehold. The Council decided to sell their freehold interest in the land to Van Hage. Van Hage and the Council agreed that Van

Hage would buy the land from the Council as part of a contract that was conditional upon the Council's Planning and Development Committee making a resolution to grant planning permission for the site. The Council received Van Hage's planning application on 21 March 2007. It appears that the application concerned a plan to build a number of dwellings. (The complainant's particular interest in this matter was that the area of land concerned was close by to his home). The completion of the sale of the freehold, the completion of a "section 106 agreement" under section 106 of the Town and Country Planning Act 1990, and the resolution to grant planning permission all took place on 20 June 2007. A section 106 agreement contains planning obligations in favour of the local authority issuing the planning consent.

## The Request

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3. The complaint made a series of requests to the Council concerning the sale of its freehold interest to Van Hage and the planning application. The complainant complained to the Commissioner about the Council's response to requests made on the following dates:
  - Request 1 on 21 June 2007
  - Request 2 on 21 June 2007
  - Request 3 on 21 June 2007
  - Request 4 on 21 June 2007
  - Request 5 on 24 June 2007
  - Request 6 on 25 June 2007
  - Request 7 on 25 June 2007
  - Request 8 on 25 June 2007
  - Request 9 on 25 June 2007
  - Request 10 on 1 July 2007
  - Request 11 on 4 July 2007
  - Request 12 on 23 July 2007
  - Request 13 on 25 July 2007
4. The Commissioner has set out the terms of each request in Annex A at the end of this Notice.
5. The Council sent a refusal notice to the complainant on 2 July 2007 and stated that it would not be responding because it considered that the requests were vexatious, manifestly unreasonable and in part repeated. It mentioned both the Act and the EIR because it was not sure which access regime was appropriate in this case. The notice expressly referred to the requests listed above with the exception of requests 3, 4 and 6 and 11 to 13. The Council explained to the Commissioner that it had made a mistake by not referring to request 3 and 4 in the notice but that it had not responded for the reason given in the notice. The Council also confirmed that it had refused to supply information requested verbally by the complainant as request 6 for the same reason but had not

included it in the notice. Requests 11 to 13 were submitted following the notice but were not responded to for the same reason.

6. In the refusal, the Council also explained that it does not have an internal review procedure. It advised the complainant to complain directly to the Commissioner if dissatisfied.
7. The complainant wrote to the Council on 5 July 2007 to appeal against the Council's decision but the Council did not respond to this correspondence.

## The Investigation

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### Scope of the case

8. On 5 July 2007, the complainant contacted the Commissioner to complain about the way his requests for information had been handled. He provided a copy of the Council's refusal notice on 2 July 2007 and asked the Commissioner to consider whether the requests had been correctly refused.
9. On 31 July 2007, the complainant supplied copies of the information requests referred to in the notice with the exception of a request referred to as being made on 28 June 2007 and described in the notice as being for the "Last ten Section 106 Agreements". In addition, the complainant supplied a copy of request 3 and 4 which had not been referred to in the refusal and copies of requests 11 to 13 which had been made following the refusal.
10. On 9 August 2007, the complainant also supplied a copy of a letter to the Council on 28 June 2007. This letter referred to a verbal request for information made at the Council's offices on 25 June 2007 (request 6) that had been refused. There was a request refused in the notice which was referred to as having been made on 28 June 2007 but the Council later clarified that this was request 7.
11. The Commissioner understood that the complainant wished the Commissioner to consider how the Council had responded to all of the requests listed as 1 to 13, although it should be noted that the Commissioner's investigation as detailed below focused on whether the requests were manifestly unreasonable at the time of the refusal notice. If the Commissioner finds that this was so, it will not be necessary to have particular regard to requests and correspondence submitted after the refusal as they will also be manifestly unreasonable if they are on the same subject.

### Chronology

12. The Commissioner wrote to the Council on 12 September 2007, 19 September 2007 and 25 October 2007 to ask for information to help him to consider the complaint.

13. The Council responded to the Commissioner on 17 September 2007, 20 September 2007 and 9 November 2007. As part of its response, the Council explained the background to the complaint and provided evidence and argument to support its refusal on 2 July 2007.
14. On 22 November 2007, the Commissioner wrote to the Council to set out his understanding of the arguments that had been presented and to ask for more information. In particular, the Commissioner asked the Council to consider whether it should have handled the requests under the EIR.
15. The Council provided its response on 10 December 2007. This included more evidence in support of the refusal notice. The Council also explained to the Commissioner that it had considered that the majority of the complainant's requests fell within the scope of the EIR but that it had also mentioned the Act in the event that its assessment about some of the information was incorrect.
16. On 17 December 2007, the Council faxed further documentation to the Commissioner in support of its letter on 7 December 2007.
17. The Commissioner wrote to the Council on 20 December 2007 and, having determined that the information was likely to fall within the scope of the EIR, asked the Council to set out its considerations in respect of the public interest test under 12(1)(b) of the EIR.
18. The Council responded to the Commissioner on 8 January 2008 and stated that it considered that the public interest in maintaining the exception outweighed the public interest in disclosing the information.
19. On 23 January 2008, the Commissioner clarified with the Council certain details of the case during a telephone conversation.
20. The Commissioner wrote further to the Council on 11 February 2008 and asked it to provide details and evidence of what steps it took to address the complainant's wide-ranging concerns about the sale of the land and the planning application.
21. The Council responded on 25 February 2008 and provided more arguments to the Commissioner in support of its application of the exception. It also gave details of the complaints and concerns raised by the complainant and what steps it had taken to address them. It provided some evidence of its activities in this regard.
22. The Commissioner made his final enquiries in a letter on 27 February 2008, to which the Council responded on 5 March 2008.
23. Throughout the Commissioner's correspondence with the Council, the complainant contacted the Commissioner at various times to set out the background to the complaint, provide documentation and to explain why he did not consider that his requests were manifestly unreasonable.

## Analysis

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### Procedural matters

24. Details of all the relevant legislative provisions of the EIR have been set out at the end of this Notice.
25. In its refusal notice, the Council did not state whether the information fell under the Act or the EIR but mentioned both. The Commissioner therefore considered whether the information requests should have been handled under the EIR.
26. In this case, the Commissioner considers that the sale of the land, the planning application and the section 106 agreement under the Town and Country Planning Act 1990, were intrinsically linked. The sale was conditional upon a resolution to grant planning permission and the section 106 agreement was created specifically to support this. The section 106 agreement was concerned with the demolition of existing buildings, the erection of new buildings and the enforcement of that agreement. In *Kirkaldie v the Information Commissioner's Office and Thanet District Council* (EA/2006/001), the Information Tribunal found that for the purposes of regulation 2(1)(c) of the EIR, a section 106 agreement is an environmental agreement affecting or likely to affect the land which is an element referred to in 2(1)(a). The Commissioner is of the view that the planning application is information on a plan and the section 106 agreement is a measure under regulation 2(1)(c) and that the information about the sale of the land relates to and is concerned with these measures. On this occasion and in this context the Commissioner has concluded that the information on the sale of the land was environmental information although this may not always be the case.
27. In correspondence to the Commissioner, the Council confirmed that it had made a mistake by not referring to request 3 and 4 in the notice but that it had not responded to the request for the reason given in the notice. The Council also confirmed that it had refused to supply information requested verbally by the complainant as request 6 for the same reason and had not referred to this in the notice. It is also clear that the Council did not consider the complainant's request for an internal review on 5 July 2007.
28. The Commissioner considers that the Council was obliged to issue a refusal notice for requests 3, 4 and 6 and to consider the complainant's subsequent appeal. The Commissioner therefore considers that the Council failed in its obligations under the EIR by not doing so.

### Exception

29. The Commissioner has not published any guidance dealing specifically with the exception under 12(4)(b) of the EIR. The exception is however referred to in the Commissioner's Awareness Guidance No. 22 ("the Awareness Guidance") which deals with vexatious and repeated requests. In the latter, the Commissioner sets out the view that if a request would be vexatious or repeated under section 14 of the Act, then it would also be manifestly unreasonable under regulation 12(4)(b)

of the EIR. The Commissioner does note however that, unlike section 14 of the Act, the exception under 12(4)(b) of the EIR is subject to the public interest test under regulation 12(1)(b).

30. In view of the above, the Commissioner has used the Awareness Guidance as an aid to judging whether in this case, the requests made were manifestly unreasonable under the EIR.
31. The Awareness Guidance states the following:

“While giving maximum support to individuals genuinely seeking to exercise the right to know, the Commissioner’s general approach is that a request (which may be the latest in a series of requests) can be treated as vexatious where:

- It would impose a significant burden on the public authority in terms of expense or distraction; and meets at least one of the following criteria:
  - It clearly does not have any serious purpose or value
  - It is designed to cause disruption or annoyance
  - It has the effect of harassing the public authority
  - It can otherwise fairly be characterised as obsessive or manifestly unreasonable
32. The Commissioner understood from the Council’s correspondence that it wished to argue that the requests would impose a significant burden in terms of expense and distraction, have no serious purpose or value, have the effect of harassing the Council and could otherwise fairly be characterised as obsessive or manifestly unreasonable.

### **Significant burden**

33. The Commissioner’s Awareness Guidance No. 22 states that:

“...even if a request appears reasonable in isolation, the previous behaviour of the requestor can be taken into account if placing the request in context will allow it to be justifiably judged as unreasonable. A public authority may therefore take account of correspondence between the requestor and itself (even on other

matters) to demonstrate ‘previous behaviour’ to support a claim of vexatiousness. The purpose of this would be to make the case that the request itself meets the criteria of vexatious request.”

34. To support its argument that this element of the criteria had been met, the Council provided to the Commissioner a copy of its “contact log” listing every occasion it had recorded contact with the complainant about the same matter from April 2007 until the end of July 2007.
35. The Commissioner inspected the contact log and noted that on 3 and 4 April 2007, the complainant made “several phone calls and visits, some by arrangement and some impromptu”, the result of which was that he was asked to put future requests into writing. The contact log records that the complainant



contacted the Council on a further five occasions in April. The frequency of contact continued in May with the complainant contacting the Council on eight occasions by way of a mixture of phone calls, letters and emails to different council officers. In the month of June, the Council's log records that the complainant contacted the Council on 28 occasions in close succession. In addition, some of the complainant's requests were not recorded in the log and these bring the total contact in June to 30 occasions. The Commissioner notes that the frequency of the contact made with various council officers up until the time of the refusal notice during the month of June was such that the complainant was contacting the Council on an almost daily basis, often more than once a day. The complainant contacted the Council on one other occasion in July before the refusal notice was issued.

36. In view of the frequency and volume of associated correspondence and previous requests for information on the same theme, the Commissioner is satisfied that it is reasonable to conclude that the requests in question would impose upon the Council a significant burden in terms of distraction, if not expense.

### **No serious purpose or value**

37. During the investigation, the complainant expressed a wide range of concerns to the Commissioner about the validity and legality of the Council's decision-making in relation to the sale of the land and the planning application. The Council argued that the complainant had, in its view, already been provided with enough information to allow him to assess the validity and legality of the processes involved. The Commissioner is aware that a significant amount of information is available as a matter of course concerning the planning application and that the complainant has been provided with other information concerning the sale of the land.
38. The Council also highlighted the nature of the requests in support of this criteria being met. It pointed in particular towards the complainant's requests concerning the section 106 agreement and associated enquiries. The complainant has expressed concerns about the legality of the deed based on the timing of the transactions involved. The Council confirmed to the Commissioner that timing is an important issue and that it had endeavoured to explain how it had conducted the transactions during a telephone conversation with the complainant, but that he had continued to question the timing of the transactions.
39. Although the Commissioner recognises that some information has already been made available to the complainant and that the Council has attempted to explain its processes, it does seem that the complainant remains concerned that proper practices have not been followed and is genuinely seeking information in connection with those concerns. The requests therefore cannot be said to have no serious purpose or value.

### **Have the effect of harassing the public authority**

40. In support of its argument that the requests have the effect of harassing the Council, the Council provided copies of correspondence from the complainant to

illustrate the tone and approach adopted. It was clear from this that a negative tone and approach had been adopted by the complainant in various items of correspondence sent to the Council.

41. One extract from the complainant's email on 8 June 2007 to a council officer reads as follows:

"Yet again you are deliberately misleading [me] and my neighbours as you are misrepresenting the true facts. Until you demonstrate to us that your statement is correct I am demanding that this application is suspended because you have acted negligently, irresponsibly and I believe illegally. Let us not forget that you are a public servant and you therefore have a duty to care. Until you produce evidence of the above, I will be calling upon [the chief executive] to suspend you as the whole of this planning application and process has been abused".
42. To give another example of the complainant's approach, in an email to the Chief Executive on 14 June 2007, the complainant wrote:

"I am strongly urging that you set aside this deceitful planning application until you...can demonstrate that you have acted with integrity and even handedness. The fact that you...choose not to answer my questions would suggest that my allegations are correct...your apathy leaves me thinking that you are running SBC as your own private fiefdom...I place you on notice again that you and your officers are nursing a lie as to the true status of the land in question and how you have conducted this dubious sale..."
43. Similarly, other correspondence from the complainant contains various allegations of illegal activities, fraud, maladministration, bias and calls for the dismissal of other council officers.
44. It was apparent from the Council's log that the complainant had sent a significant amount of correspondence to the Council from April to the beginning of July and had contacted it on many other occasions, primarily in order to question the legality of the sale of the land and the planning permission.
45. It is the Commissioner's view that, whatever the complainant's intention, regular correspondence of the nature described above does constitute harassment of the Council. The Commissioner believes that it is not reasonable to expect people at work to be subjected to regular disparaging and negative comments from a member of the public which relate to a series of unsubstantiated allegations, and this is no less so simply because the people experiencing the behaviour happen to work within the public sector. The Commissioner believes that this behaviour was indicative of the general attitude of the complainant when approaching the Council about this matter.
46. The Commissioner also considered that the behaviour of the complainant in making very serious allegations and contacting the Council about the same matter with excessive regularity also had the effect of harassing the Council for another reason. It is clear that the complainant had a large amount of detailed enquiries and allegations to make about the sale of the land and the planning



- application. In light of this, it was the Commissioner's view following his review of the complainant's contact with the Council that the complainant had persistently failed to allow the Council a reasonable amount of time to properly consider the allegations or complaints and to respond appropriately in due course.
47. Turning now to the complainant's information requests, the Commissioner considers that while it is his view that the purpose of repeated negative comments and persistent complaints over a relatively short period of time is clearly to harangue the Council, it does seem that the complainant's information requests have a different purpose in that the complainant is aiming to gather evidence to support his various allegations against the Council. The Commissioner therefore considered whether the manner in which the complainant had requested information from the Council, including the frequency and number of requests made, had the effect of harassing it in the sense that it could be judged to be part of a pattern of behaviour which has the effect of harassing the Council.
  48. While it appears that the complainant's requests that were refused by the Council on 2 July 2007 did not contain examples of the negative tone adopted in associated correspondence, the Commissioner noted the total number of requests made by the complainant since the beginning of April until the refusal notice. From the Council's log and other correspondence available, the complainant appears to have made at least 20 requests for information on the same theme. In relation to the refused requests in particular, the Commissioner also noted their frequency, repetition, and the different council officers who were involved either because the complainant wrote to them or because he had copied them in via email.
  49. The complainant argued that he contacted the Council in the way that he did because it had not been cooperative. However, it was not apparent to the Commissioner that there had been any general lack of cooperation on the Council's part. The complainant also argued in defence of his repeated requests that he had been advised to write to everybody involved by the Council's Freedom of Information officer. The Council denied giving such advice but did explain to the Commissioner that the information officer would not necessarily be the point of contact for requests for environmental information. To this extent, there was evidence of a lack of completely clear procedures. The Commissioner also considered that it was open to the Council to take some remedial action to reassure the complainant that his requests would be dealt with within 20 working days and to allocate a single point of contact. Despite this, it is clear that the complainant had access to the email addresses of staff at the Council so there does not seem to be a logical explanation for why he did not simply copy everybody into the first request if he genuinely felt that this was necessary. Further, copying in other officers, including the Council's Chief Executive, ought to have given the complainant adequate reassurance that the requests would not be overlooked or ignored.
  50. The Commissioner considers that the above is evidence that the complainant's information requests formed part of a harassing pattern of behaviour which saw the complainant persistently contacting the Council about the same matter over a

short period of time. From April until the beginning of July, the complainant contacted the Council on more than 44 occasions.

51. The complainant expressed to the Commissioner that he had not known about the 20 working day deadline under the FOIA or the EIR at the time and had felt under pressure to make an application for a judicial review. In regard to this, the Commissioner recognises that the level of contact a complainant has with a public authority may well legitimately increase because of perceived time pressures for appeals etc, and that contact from members of the public may increase at times when important decisions are being made. In addition, quite a few of the complainant's requests were repeated which would have the practical effect of reducing some of the burden. The Commissioner carefully considered these points, however, when the complainant's requests are put in the wider context of his contact with the Council over this period of time, it is not the Commissioner's view that the volume of contact, the frequency, the general approach and tone of it could be regarded as reasonable in any circumstances. The Commissioner therefore agrees with the Council that the refused requests did have the effect of harassing it.

#### **Can otherwise fairly be characterised as obsessive or manifestly unreasonable**

52. To consider to what extent this element of the criteria had been met, the Commissioner questioned the Council about what steps it had taken to address the complainant's concerns.
53. The Council pointed to how much information had been made available to the complainant already, either through itself, Hertfordshire County Council ("the County Council"), or as a matter of course because it relates to planning issues. The Council stated that by the time of the refusal notice, the complainant had been supplied with a number of material documents including a copy of an executive report concerning the sale of the land (with two minor redactions), the independent valuation of the Council's interest in the land, a copy of the lease between the Council and Van Hage, and all correspondence between the County Council and the Council's legal department on the section 106 agreement. The complainant was also provided with details of meetings held by the Council in a letter to the complainant on 14 May 2007. The Council also explained that the planning application and objections are all available on its website as is a copy of the completed 106 agreement. The Planning Committee meeting was open to the public and the officer report setting out the arguments for and against the application, background papers, and the terms of the section 106 agreement were publicly available. Following registration, details of the land transfer can also be inspected at the Land Registry.
54. The Council also explained that prior to the refusal notice, council officers, including senior members of staff, had spent several hours attempting to address the wide range of issues raised by the complainant. It appears that the complainant initially contacted the Council's Estates Department about the land sale and that officers had spent a significant amount of time dealing with the complainant by telephone and in person. When this became too burdensome, the complainant was advised to put further concerns in writing, although telephone

contact and visits clearly continued after this. The Council stated that it had then arranged a meeting on 18 May 2007 between the complainant and the Council's Director of Environmental Services in an attempt to resolve the complainant's concerns informally. The Council explained that the discussion largely concerned the Council's lease with Van Hage although issues concerning a conflict of interest were also discussed. Following this, the Council's solicitor also spoke to the complainant over the telephone on a couple of occasions and it appears that the lease and the section 106 agreement were the focus of these conversations. The Council also advised the Commissioner that the complainant has had "numerous discussions" with planning officers and in April 2007, planning officers met with the complainant at his house to discuss various aspects of the planning application.

55. As evidence of the above, the Council was able to provide to the Commissioner notes of the complainant's meeting with the Director of Environmental Services (which were unfortunately of poor quality), a telephone note and a letter to the complainant on 14 May 2007. The Commissioner recognises that the Council clearly considered that the best way to deal with the complainant's concerns was

to address them informally so far as possible and it is apparent that a significant amount of time went into helping the complainant to understand the complex legal issues involved and the various transactions that took place when selling the land and granting the planning permission. It is also apparent that this was not a straightforward case of a member of the public raising specific concerns in a timely and orderly manner. However, the Council's approach does mean that it is not as clear as it could have been (if for instance, the Council had operated a formal complaints procedure) that the complainant's concerns had been adequately addressed.

56. The Commissioner notes that the Council was also able to provide documents showing that the outcome of complaints made by the complainant to the Audit Commission ("the AC") and the Solicitor's Regulation Authority ("The SRA") had been in the Council's favour. The Commissioner did not give weight to these outcomes in deciding whether the requests were manifestly unreasonable at the time of the refusal notice however because the results were only communicated afterwards. The AC outcome was communicated to the complainant on 11 July 2007, and the judgement of the SRA was provided to the complainant on 21 August 2007.

57. In view of the above, the Commissioner does not consider that it is entirely obvious that the complainant had exhausted the Council's ability to help him. The Commissioner was therefore not satisfied that the requests could be described as obsessive or manifestly unreasonable for this reason. However, although there may have been weaknesses in the Council's efforts to resolve the complainant's various complaints (i.e. in not committing the outcome of its discussions to writing in letters to the complainant), the Commissioner was persuaded that the volume and frequency of the complainant's contact over a relatively short period of time was indicative of an obsessive preoccupation which went beyond the realms of what may be described as reasonable persistence.

## The Public Interest

58. The exception under 12(4)(b) of the EIR is subject to the public interest test under 12(1)(b). This dictates that the Commissioner must consider whether in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
59. The Commissioner also notes the specific presumption in favour of disclosure under 12(2) of the EIR which he understands to mean that if the factors on both sides are evenly balanced, the public authority should disclose the information.
60. In favour of the Council responding to the refused requests, the Commissioner considered that the general purpose of the EIR is to enable the public to access information which affects or is likely to affect the environment. This has the clear benefits of promoting accountability and transparency as well as enabling individuals to access information which may help them to challenge a decision made, or an action taken, by the public authority. This in turn promotes a sense of democracy and public participation.
61. The Commissioner also recognises that in this particular case it is important that the public are reassured that the Council is showing regard to the proper formal processes in place, particularly in view of the potential conflict of interest in the Council selling land which is conditional upon a resolution to grant planning permission.
62. Against the Council responding, the Commissioner has considered that the general purpose of the exception under 12(4)(b), in common with section 14 under the FOIA, is to encourage responsible use of the "Right to Know" legislation and to avoid damage to its reputation. While public authorities are being encouraged towards goals of transparency and accountability which benefit the public as a whole, it is not the intention of the legislation to tolerate the harassment of public officials to achieve this effect for individuals in pursuit of particular concerns. If this was the case, the Commissioner considers that the legislation would be seriously undermined. The exception also confers the practical benefit of protecting public authorities from being subject to too much distraction from their many other important duties conferred upon them by government. In addition, the exception also functions to ensure that compliance costs are kept to a reasonable amount.
63. In weighing these considerations in the balance, the Commissioner had regard to the fact that it is clear that a significant amount of information on the sale of the land and the planning application was in the public domain at the time of the Council's refusal. This was through a combination of the complainant's requests to the Council and the County Council, as well as information that is made available as a matter of course because it concerns a planning application. Additionally, the Commissioner notes the outcome of the AC's investigation when it stated that its enquiries had "not identified any issues with the processes followed by the Council that would indicate that the Council has acted improperly" as regards maintaining an appropriate split between its roles as land owner and planning authority. The Commissioner also notes that the planning application

was subject to public consultation and was considered at a formal Planning Committee. It is the Commissioner's view that these factors lessen the public interest in disclosing further information.

64. The Commissioner understood from contact with the complainant that he was particularly concerned about the timing of the transactions involved, namely the sale of the land, the signing of the section 106 agreement and the resolution to grant planning permission. When the Commissioner asked the Council about this, it confirmed that timing was an important issue. It explained that planning permission cannot be granted without a section 106 agreement and a 106 agreement cannot be agreed before the sale without potentially causing practical and legal difficulties. The Council explained that in this case, it completed the sale and immediately afterwards completed the 106 agreement and the planning permission. It stated that because the transactions follow so closely after one another, it finds that this is the best way to deal with the legal requirements without losing the confidence of the purchaser that the planning resolution will be granted upon completion of the sale.
65. The Commissioner does not consider that there is any obvious reason to doubt the Council's explanation of how it conducted the sale process. It seems a fairly straightforward and sensible approach in the circumstances. It is not therefore the Commissioner's view that there is a strong public interest in the Council responding to the complainant's requests for this reason although he appreciates that this issue has obviously keenly interested the complainant.
66. In relation to the 106 agreement, the complainant had also made allegations to the SRA that the Council had deliberately altered the deed in order to conceal the illegality of it. However, an investigation by the SRA concluded that there was no evidence to support this allegation. An appeal by the complainant to the Legal Services Ombudsman as a result of this decision was also not upheld. Again, this lessens any public interest arguments in favour of disclosure of more information on this topic.
67. Perhaps the strongest of the complainant's arguments for disclosure was the fact that Van Hage had since sold on the land purchased from the Council for a very significant profit. The Council confirmed to the Commissioner that this was the case and that it had itself been surprised by this. The AC had looked at the Council's valuation of the land as part of its investigation and concluded that there was no case to answer, although the Commissioner understands from the complainant that this is now under review. There is arguably some public interest in more information about the valuation being available if it is held although the Commissioner notes that a copy of the independent valuation relied upon by the Council is already in the public domain. As such, it seems unlikely that any further information would contribute so significantly to the public's understanding of this issue to the extent that it would equal or outweigh the reasons for the exception under 12(4)(b)
68. In view of the above, the Commissioner considers that in all the circumstances of this case, the public interest in maintaining the exception under 12(4)(b) outweighs the public interest in disclosing the information.

## The Decision

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69. The Commissioner's decision is that the Council was correct to rely on regulation 12(4)(b) under the EIR and that, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

However, the Commissioner has also decided that the Council breached the EIR in the following respects:

- It breached regulation 14(1) because it did not issue a refusal notice relating to request 3, 4 and 6.
- It breached regulation 11(3) because it did not consider the representations made by the complainant in his letter on 5 July 2007.
- It breached regulation 14(3)(b) because it did not specify in the refusal what its considerations were in respect of the public interest test under regulation 12(1)(b).

## Steps Required

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70. The Commissioner requires no steps to be taken.

## Other matters

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71. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matter of concern:

- The Commissioner would like to take this opportunity to remind the Council that requests for environmental information need not be in writing. The authority should consider whether its current procedures contain adequate provision for dealing with verbal requests
- The Council's refusal notice of the 2 July 2007 explained that the authority did not have a procedure for dealing with complaints about the handling of requests, despite the fact that the Council's website makes it clear that such a procedure is available. The Commissioner would like to take this opportunity to remind the authority that under the EIR a complaints procedure is mandatory.



## Right of Appeal

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72. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 7th day of April 2007**

**Signed .....**

**Gerrard Tracey  
Assistant Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Annex A

Request 1 on 21 June 2007

“Under the Freedom of Information Act could you please provide me with all the relevant details regarding the disposal of SBC’s freehold interest, to include all meetings, who attended and all letters and relevant paperwork.”

Request 2 on 21 June 2007

“Under the Freedom of Information Act could you please provide me with all relevant details of the above mentioned sale and valuation and details of any conversations and meetings regarding the SBC’s sale of their Freehold interest in the above.”

Request 3 on 21 June 2007

“Under the Freedom of information act I am requesting all details of conversations from when you were first instructed regarding the above sale of SBC’s freehold interest to Van Hage. I want to know the exact terms of the sale, how much deposit was paid, when it was paid and where it was banked.

I also request under the freedom of information act a copy of Part II Confidential Report, 24<sup>th</sup> January 2007 with all details, as opposed to 3.1 and 5.3. being omitted from the copy I have.”

Request 4 on 21 June 2007

As for “Request 3”

Request 5 on 24 June 2007

“Under the Freedom of Information Act could you please provide me with all details regarding the completion of the council’s sale of their freehold interest in the above to Van Hage. I would like to know exactly when the money was received and where it was paid into. Could you please advise me where the transfer was executed and at what time and on what date.

Could you please confirm who was in attendance when the 106 Agreement was signed, where the signing took place and at what time.”

Request 6 on 25 June 2007

Description of request made contained in complainant’s letter on 28 June 2007 as follows:

“I asked you to produce your last 3 completed S106 Agreements to confirm the wording was consistent but you declined and left the reception.”

Request 7 on 25 June 2007

“Under the freedom of information act could you please supply me with the copies of your last 10, 106 agreements”.

Request 8 on 25 June 2007

“Under the Freedom of Information Act I request all relevant details, letters, meetings and conversations regarding the above [planning application]”.

Request 9 on 25 June 2007

“Under the Freedom of Information Act I request all relevant details, letters, meetings and conversations regarding the above [planning application]”.

Request 10 on 1 July 2007

“Under the Freedom of Information Act I require details of all of Stevenage Borough's assets sold through the disposal programme for the year 2006/2007. Also under the Freedom of Information Act could you please confirm where and when you [sic] S106 Agreement for the above [planning application]”.

Request 11 on 4 July 2007

“I repeat once again under the freedom of information act that I require ALL of the above mentioned information [as listed in the Council's refusal notice] as opposed to the other doctored documents that you have provided me with so far”

Request 12 on 23 July 2007

“Could you please, under the freedom of information act, supply me with copies of part 2 agreements of planning meetings on 19<sup>th</sup> June 2007 and 10<sup>th</sup> July 2007”.

Request 13 on 25 July 2007

“Could you please confirm if Stevenage Borough Council have a further financial interest or any other vested interest regarding the development of the Listed Farmhouse and the Barns on the Van Hage Site”.

## **Legal Annex**

### **Regulation 2(1)** In these Regulations –

“environmental information” has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on -

- (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 areas, 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, affecting or likely to affect the elements of 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;

**Regulation 11(1)** Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant's request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request.

**Regulation 11(3)** The public authority shall on receipt of the representations and free of charge –

- (a) consider them and any supporting evidence produced by the applicant; and
- (b) decide if it has complied with the requirement.

**Regulation 12(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 circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

**Regulation 12(2)** A public authority shall apply a presumption in favour of disclosure.

**Regulation 12(4)** 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;

**Regulation 14(1)** If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.

**Regulation 14(3)** The refusal shall specify the reasons not to disclose the information requested, including –

- (b) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3).