

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

### **Decision Notice**

**Date: 01 March 2010**

**Public Authority:** Exeter City Council  
**Address:** Civic Centre  
Paris Street  
Exeter  
Devon  
EX1 1JN

### **Summary**

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The complainant made two requests to Exeter City Council on 20 December 2007 and 22 January 2008. The Council applied section 14(1) of the Freedom of Information Act (the "Act") and refused to provide any of the requested information. During his investigation, the Commissioner determined that part of the requested information fell under the provisions of the Environmental Information Regulations 2004 (EIR). The Council subsequently applied regulation 12(4)(b) of the EIR to that information, and section 14(1) of the Act to the remainder. The Commissioner concluded that it was reasonable for the Council to apply section 14(1) of the Act. This Commissioner also concluded that the Council had correctly applied regulation 12(4)(b) of the EIR, and that the public interest in maintaining the exception outweighed the public interest in disclosing the information. The Commissioner found some procedural breaches in the way in which the Council handled the requests but requires no steps to be taken.

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

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.
2. The Environmental Information Regulations (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 Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR.

## Background

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3. In January 2007, the complainant agreed to submit all correspondence to the Council through one named contact. The Council stated to the Commissioner that this agreement was made in an attempt to structure the level of engagement by the complainant. Due to a disability, the complainant submitted the majority of his correspondence, including requests for information, by telephone dictation to an employee of the Council. The complainant has also been involved in a local committee which was set up to represent the views of local residents in relation to housing issues.

## The Request

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4. On 20 December 2007, the complainant submitted the following request to the Council:

“Under the Freedom of Information Act 2000 I would like a copy of the HGN [sic] Mock Inspection Report for reference for clarity can be found in paragraph 9 of the TALC minutes of the 24 October 2004”.

The complainant was referring to a Housing Quality Network mock inspection report (HQN report) that relates to the performance of the Council's Housing Service.

5. On 22 January 2008, the complainant also submitted the following request to the Council:

“Under the Freedom of Information Act I would like a copy of minutes and statistics etc of the Repairs Partnership Board.”

6. On 20 February 2008, the Council refused both requests for information in one refusal notice and stated:

“[sic] The Council does hold this information but will refuse releasing these documents to you using Section 14 of the Freedom of Information Act – vexatious requests. The Council believes that these requests form part of a catalogue of requests for information from you which any reasonable person would describe as being ‘obsessive or manifestly unreasonable’, and that they place substantial burdens on the finance and human resources of the authority...Over the past 12 months you [the complainant] have made over 50 requests to the Council for information on a vast range of issues”.

7. On 8 March 2008, the complainant asked the Council to review its decision to refuse his requests and on 12 May 2008 he chased a response.

8. Following the intervention of the Commissioner, the Council issued the complainant with the findings of its internal review on 23 July 2008. The Council maintained its position that the requests were vexatious and stated that the frequency of requests had been a significant factor in its refusal.

## The Investigation

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### Scope of the case

9. The complainant initially wrote to the Commissioner on 2 June 2008 stating that he was dissatisfied with the Council's decision to apply section 14 of the Act in relation to his two requests on 20 December 2007 and 22 January 2008. As the complainant had not exhausted the Council's complaints procedure, the Commissioner did not initiate his investigation at this stage but wrote to the Council and asked it to issue the findings of its internal review. Following receipt of the findings of the Council's internal review, the complainant contacted the Commissioner on 1 August 2008 and asked him to investigate his complaint.
10. The Commissioner initially proceeded to investigate the Council's application of section 14(1) of the Act. During the course of his investigation, the Commissioner determined that the HQN report contains both environmental and non-environmental information. Although the Council remained undecided as to whether the EIR were applicable, it subsequently applied regulation 12(4)(b) in relation to the environmental information contained in the HQN report. As such, the Commissioner has also considered whether the Council was correct to apply this regulation and whether the public interest in maintaining the exception outweighed the public interest in disclosure.

### Chronology

11. Between 31 March 2009 and 2 February 2010, the Commissioner wrote to the Council on a number of occasions requesting representations to support its application of section 14(1) of the Act and, latterly, the exception at regulation 12(4)(b) of the EIR.
12. In the initial stages of the investigation, the Council did not fully accept the Commissioner's view that information contained within the HQN report could be considered environmental information.
13. Throughout the Commissioner's investigation, the Council offered arguments in the event that the Commissioner determined the EIR was applicable. However, until January 2010, the Council maintained that the HQN report itself was not environmental information. The Council subsequently verbally accepted the Commissioner's view that a page-by-page examination of the HQN demonstrates that it contains environmental information.

14. The Commissioner recognises that his investigation took longer than originally anticipated, but he considered it appropriate to obtain agreement and full arguments from the Council in relation to the application of the EIR.

## Analysis

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### Substantive Procedural Matters

15. The Commissioner has considered whether the Council was correct to consider both requests for information under the Act.
16. Wherever possible, the Commissioner considers that the correct access regime should be determined by the information held rather than by the request itself. In this case, the Commissioner has examined all of the withheld information.
17. The full text of the sections and regulations referred to can be found in the Legal Annex at the end of this Notice.

### Relevant Access Regime – Housing Quality Network report

18. In reference to the HQN report, the Commissioner considered the Council's representations on 1 May 2009, in which the Council stated:

“the Housing Quality Network report is about the way the Council manages its housing service and is not a report about the condition of the properties”.
19. The Commissioner acknowledges that the HQN report relates to the Council's Housing service, and that the focus of the report is on the performance of the Council's Housing service. As such, the Commissioner considers that the majority of the information contained in the HQN report is covered by the provisions of the Act.
20. However, the Commissioner notes that the report also contains information which he considers to fall within the definition of environmental information set out in regulation 2(1) of the EIR. In particular, the Commissioner has noted the following examples:
  - the report contains references to the Council's policy and practices for dealing with anti-social behaviour – for example, in relation to graffiti and fly-tipping;
  - the report contains references to the Council's policies and practices regarding Estate Management, specifically in relation to fly-tipping and graffiti;
  - the report contains references to the Council's practices in relation to conducting asbestos surveys and testing for Legionella.

21. The Commissioner considers that all of the above examples fall within the definition set out at regulation 2(1)(c) of the EIR. This is because all examples can be considered to be written information on measures affecting or likely to affect the elements and factors referred to in (a) and (b) as well as being measures designed to protect those elements. In this case, the Commissioner considers the elements to be land and landscape, and he considers the factors to be substances, noise, waste and emissions - all of which would affect or would be likely to affect the land and landscape. In addition, the Commissioner considers that regulation 2(1)(f) is relevant to information regarding asbestos surveys and testing for Legionella.
22. In reaching this view, the Commissioner is mindful of the Council Directive 2003/4/EC, which is implemented into UK law through the EIR. A principal intention of the Directive is to allow the participation of the public in environmental matters. Therefore, the Commissioner considers the phrase "*any information ...on*", as contained in the definition of environmental information under regulation 2, should be interpreted widely. It will usually include information concerning, about or relating to measures, activities and factors likely to affect the state of the elements of the environment.
23. As such, the Commissioner considers that the report falls within the scope of both the Act and the EIR, and, as such, needed to be considered by the Council under both regimes.

### **Relevant Access Regime – Repairs Partnership Board minutes**

24. In reference to the minutes of the Repairs Partnership Board, the Commissioner considered the Council's representations of 1 May 2009, in which it stated:

“...the minutes and reports of the Repairs Partnership Board refer to discussions about the housing repairs and maintenance service and do not relate to the condition of the properties”.
25. After viewing the minutes, the Commissioner is satisfied that the minutes do not contain environmental information, but refer to such issues as performance indicators. In view of this, the Commissioner is satisfied that the Act is the correct access regime under which to consider this information.

### **Summary**

26. The Commissioner considers that the HQN report contains both non-environmental and environmental information. As such, the Commissioner takes the view that the complainant's request of 20 December 2007 falls under both the Act and the EIR.
27. The Commissioner considers that the minutes of the Repairs Partnership Board do not contain any environmental information. As such, the Commissioner is satisfied that the complainant's request on 22 January 2008 was correctly handled under the provisions of the Act.

## **Section 14(1) of the Act – ‘vexatious requests’**

28. The Commissioner has considered whether the Council was correct in its application of section 14(1) of the Act in relation to the non-environmental information requested by the complainant; i.e. the minutes of the Repairs Partnership Board and those parts of the HQN report that are not environmental information.
29. Section 14(1) provides that a public authority does not have the duty to comply with a request where it may be considered vexatious. As a general principle, the Commissioner considers that this section of the Act is intended to serve as protection to public authorities against those who may abuse the right to seek information.
30. The Commissioner’s guidance on section 14<sup>1</sup> states the following:
- “Deciding whether a request is vexatious is a balancing exercise, taking into account the context and history of the request. The key question is whether the request is likely to cause unjustified distress, disruption or irritation. In particular, you should consider the following questions:
- Could the request fairly be seen as obsessive?
  - Is the request harassing the authority or causing distress to staff?
  - Would complying with the request impose a significant burden in terms of expense and distraction?
  - Is the request designed to cause disruption and annoyance?
  - Does the request lack any serious purpose or value?”
31. The Commissioner is mindful that it is the request, and not the requester which is judged to be vexatious.

### **Could the request fairly be seen as obsessive or manifestly unreasonable?**

32. Where a request can fairly be seen as obsessive, the Commissioner is of the view that there is a strong indication that the request will also be vexatious. The Commissioner considers determining factors in deciding whether a request is obsessive will include the volume and frequency of requests. As such, the context and history of the requests is also particularly relevant because it is unlikely that an isolated requested will be considered obsessive.
33. In reaching a decision as to whether the requests in this case can fairly be seen as obsessive, the Commissioner has taken account of the Information Tribunal’s findings in the case of *Betts v Information Commissioner (EA/2007/0109)*. In this case, the Tribunal considered not just the request, but the background and history to the request as part of a long drawn out dispute between the parties. The request was considered vexatious when viewed in context as it was a continuation of a pattern of behaviour.

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<sup>1</sup> [http://www.ico.gov.uk/what\\_we\\_cover/freedom\\_of\\_information/guidance.aspx](http://www.ico.gov.uk/what_we_cover/freedom_of_information/guidance.aspx)

34. In the Council's refusal notice of 20 February, it stated that "these requests [the requests of 20 December 2007 and 22 January 2009] form part of a catalogue of requests for information...which any reasonable person would describe as 'obsessive or manifestly unreasonable'." The Council provided the Commissioner with a spreadsheet listing 66 pieces of correspondence, including requests for information, it received from the complainant between January 2007 and February 2009.
35. The Council initially argued that the complainant's 'obsessive' catalogue of requests and correspondence related to a "vast range of issues". However, in correspondence with the Commissioner, the Council subsequently changed its position and stated that many of the complainant's requests related to "only a few subject matters". According to the spreadsheet provided by the Council, those subject matters mostly appear to relate to Housing issues, and include such issues as Council performance data, similar data relating to Council contractors, and information relevant to the functions of the committee referred to in paragraph 3. However, the complainant also submitted correspondence in relation to the Council's disability scheme.
36. In his complaint to the Commissioner, the complainant stated that he had made only six requests for information under the provisions of the Act. The Commissioner noted that many pieces of correspondence contained requests for information which were responded to informally and outside the provisions of the Act. The complainant also later confirmed that the two requests under investigation are linked not only to the functions of the committee, but also more generally to the management of the Housing department.
37. The Council stated that the complainant submitted a series of linked requests in relation to the subject matters referred to in paragraph 35. In particular, the Council highlighted the following examples. The Commissioner makes no judgement on the purpose or value of these requests.
- On 23 January 2007, the complainant requested "a copy of the policy on response times for repairs and the policy giving the category for repairs". Following the Council's response on the same date, the complainant submitted a further related request on 1 February 2007 for confirmation of the target time for repairs by a certain contractor. The Council responded to this request on 9 February 2007, following which the complainant submitted a further related request on 28 March 2007 for clarification regarding the target times. The Council responded on 19 April 2007, after which the complainant then sent a further letter on 23 April 2007, again for performance data but in relation to "minor works under terms of contract". The Council's response of 28 April 2007 was followed by a further request on 23 May 2007, in which the complainant thanked the Council for the provision of performance data to date but stated that the information was virtually meaningless without further breakdown of data. The Council sent a 'holding letter' on 25 May 2007, to which the complainant responded on 31 July 2007 stating "please can you let me know if you are going to provide this as two months has

passed since my original request". The Council responded on 16 August 2007.

- On 22 January 2007, the complainant contacted the Council to outline his concerns with the Council's disability scheme. The complainant does not appear to have made a request for information. The Council responded to the complainant's concerns on 23 January 2007. The complainant contacted the Council again on 26 January 2007 in which he commented on the Council's response, and requested the Council reply to his further comments in writing. The Council responded on 9 February 2007. On 28 March 2007, the complainant again contacted the Council, and commented on its previous response. The complainant included a request for a timed programme of implementation which appears to relate to the Council's equality scheme. The Council responded on 19 April 2007. The complainant sent a further piece of correspondence on 23 April 2007, in which he stated that he intended to contact the Disability Rights Commission and Local Government Ombudsman because the Council had not provided a timed schedule. The complainant then sent a further piece of correspondence on 3 May 2007 requesting the Council's comments prior to referring the matter to the Ombudsman. The Council responded to this latest piece of correspondence on the same date.

38. The two examples set out in paragraph 37 illustrate how disclosure of information and the Council's responses to correspondence resulted in further requests and / or correspondence. During the period outlined in the examples, the complainant also submitted 20 further letters containing at least 10 requests for information. This is evidence of a pattern of behaviour that suggests it may be difficult for the Council to ever satisfy the complainant's desire to correspond with the Council.
39. Taking into account the volume of correspondence and requests submitted to the Council by the complainant, the Commissioner is satisfied that the two requests under investigation in this case do form part of an ongoing dialogue between the complainant and Council. However, in considering whether the requests could fairly be seen as obsessive, the Commissioner is mindful of the line between persistent requests and obsessive requests.
40. The Commissioner noted the significant volume and frequency with which the complainant has submitted requests and correspondence - at its peak in May 2007, the Commissioner noted that the complainant submitted 14 separate queries to Council staff. The Commissioner also noted that the complainant submitted 10 separate queries in each of August 2007 and January 2008. The evidence provided to the Commissioner suggests that much of that correspondence related to the same or similar issues, with numerous examples of requests that had been generated as a result of information previously provided to the complainant by the Council.
41. The Commissioner also noted the complainant's confirmation that the two requests under investigation relate to the Housing department and to the functions of the committee. The Commissioner is satisfied that the two requests under investigation share common themes with at least the first example set out at paragraph 37.



42. The sample of correspondence viewed by the Commissioner indicated that the submission of successive requests by the complainant did not arise as a result of inadequate request handling on behalf of the Council. The Commissioner does not therefore consider that the pattern of behaviour can be attributed to persistent attempts by the complainant to obtain information but is indicative of a pattern of behaviour whereby the provision of requested information generates further requests.
43. In isolation, the Commissioner is satisfied that the two requests under investigation are reasonable requests. However, in this case, the Commissioner is also satisfied the Council has demonstrated that the two requests represent a continuation of a pattern of behaviour that has resulted in the large body of linked correspondence to which the Council has referred, and that could fairly be seen as obsessive.

### **Is the request harassing the authority or causing distress to staff?**

44. In determining whether a request has the effect of harassing an authority or causing distress to staff, the Commissioner's guidance states that the focus should be on the likely effect of the request seen in context, and not on the intention of the requester. The Commissioner is of the view that the relevant question is whether having to deal with the request would be distressing or harassing, regardless of the subject of the request.
45. The Commissioner considers that relevant factors could include the volume and frequency of correspondence, the use of hostile, abusive or offensive language, an unreasonable fixation on an individual member of staff, or mingling requests with accusations or complaints.
46. On the basis of the sample provided, the Commissioner does not consider the complainant's correspondence has contained hostile, abusive or offensive language. In this respect, the Commissioner does not consider that the requests could cause distress to the Council's staff.
47. The Council has argued that previous communications with the complainant have caused distress to members of Council staff. The Council has provided evidence of one such occasion in December 2006 which indicates that the complainant had submitted allegations of victimisation against the member of staff.
48. Based on the evidence provided by the Council, the Commissioner does not consider any allegations contained within requests to be of the same severity as those referred to at paragraphs 53 and 54 in the Information Tribunal's decision in *Gowers v Information Commissioner* (EA/2007/0114). However, as outlined in paragraphs 44 and 45 of this notice, the Commissioner considers that the context of the requests is important, and that distress can be caused by mingling requests with accusations.
49. The Commissioner is mindful of the volume and frequency of requests submitted to the Council, which he has examined at paragraphs 33 to 42. The

Commissioner has also noted the Council's example set out at paragraph 47, in which the complainant submitted accusations of victimisation. The Commissioner accepts that any accusation of victimisation could be distressing to a member of staff.

50. In this case, the Commissioner considers that a decision as to whether the two requests under investigation could cause distress to Council staff is finely balanced. The Commissioner accepts that accusations of victimisation may be distressing, and that the volume of correspondence alone may potentially have the effect of harassing the Authority. However, the Commissioner noted that the Council only provided one example of an accusation being directed at Council staff, and this occurred one year prior to the submission of the first request under investigation. The Commissioner does not consider such a seemingly isolated incident to be indicative of the complainant's usual behaviour.
51. The Commissioner also notes that the complainant does not appear to have subjected Council staff to hostile, abusive or offensive language, or have been fixated with any member of staff.
52. As such, in this case the Commissioner does not consider that the Council has provided strong enough arguments to demonstrate how complying with the two requests under investigation could cause distress to Council staff.

**Would complying with the request impose a significant burden in terms of expense and distraction?**

53. The Commissioner's guidance states that when considering any burden imposed in complying with a request, consideration will need to be given not only to the cost of compliance, but also whether staff would be diverted or distracted from their usual work.
54. In considering this matter the Commissioner has again considered the Information Tribunal's views in *Betts v Information Commissioner* (EA/2007/0109). In this case, the Tribunal indicated that even if it would not create a significant burden to respond to the request, it may still be reasonable for a public authority to conclude that compliance would result in a significant burden if, in answering that request, it was "extremely likely to lead to further correspondence, further requests and in all likelihood, complaints against individual officers".
55. In its refusal notice of 20 February 2008, the Council stated that the complainant's two requests of 20 December 2007 and 22 January 2008 form part of a "catalogue of requests" which "place substantial burdens on the finance and human resources of the authority".
56. The spreadsheet referred to in paragraph 34 indicates the amount of time spent by Council staff considering and responding to previous requests. The Council suggested that it has spent more than 80 hours responding to previous requests and correspondence during the period outlined in paragraph 34. In reaching this figure, the Council has calculated the time spent on taking telephone calls during

which the complainant dictated letters (for the reasons outlined in paragraph 3), and the time spent in responding to requests. The Council has calculated that the time spent in each area is approximately equal.

57. The Commissioner is mindful of the reason for which the Council accepts dictated letters from the complainant, and is cautious not to consider the significant burden which results purely from these circumstances. However, the Commissioner will consider the burden of such communication where the Council is able to demonstrate that the responses it provided to the complainant's requests have been used to generate further successive requests.
58. The Council has argued that the complainant often uses information provided in its response to one request to submit further requests. As a result of previous experiences, the Council considers that providing the information requested on 20 December 2007 and 22 January 2008 would generate further requests. In support of this view, the Council has again drawn the Commissioner's attention to the two examples of successive requests and correspondence outlined in paragraph 37. The Council indicates that it has spent more than 3 hours responding to the correspondence outlined in each example.
59. In both examples, the Commissioner noted that each successive request made reference to the information previously provided by the Council. As such, the Commissioner is satisfied that the Council has demonstrated how providing a response to one request can result in further requests. Furthermore, the Commissioner also noted that each example related to different departments within the Council, which indicates that any burden imposed by complying with requests could relate to multiple Council employees rather than one individual point of contact.
60. The Commissioner has also considered the context of the two requests under investigation. The Commissioner noted that the requests were made in the context of an ongoing dialogue between the complainant and Council relating to the functions and role of the Committee referred to in paragraph 3. The Commissioner also noted that these requests were submitted after the Council had attempted to manage the impact of correspondence received from the complainant by providing him with a single point of contact.
61. In view of this context, and the examples outlined in paragraph 37, the Commissioner is satisfied that the complainant would be likely to submit further requests if he is provided with the information requested in the two requests under investigation. The Commissioner also considers that the expense and distraction imposed by responding to the requests detailed in the spreadsheet are a significant burden to the Council, which would be increased by further requests resulting from the provision of the requested information.
62. As such, the Commissioner is satisfied that the Council has demonstrated how complying with the two requests under investigation would impose a significant burden on the Council, in terms of both expense and distraction.

### **Is the request designed to cause disruption and annoyance?**

63. The Commissioner considers that this factor relates to the intention of the complainant, and, therefore, can be difficult to prove. As such, the Commissioner is of the view that a public authority will require a strong argument in order to demonstrate that a request is designed to cause disruption and annoyance.
64. The Commissioner does not consider that the Council provided any detailed representations in relation to this factor. However, the Commissioner noted the complainant's representations in relation to his work with the Committee referred to at paragraph 3 of this notice. The Commissioner acknowledged that the link between this work and the information requested may indicate that the requests were not designed to cause disruption and annoyance.

### **Does the request lack any serious purpose or value?**

65. The Commissioner considers that the Act is not generally concerned with the motives of the applicant, but with transparency for its own sake. The Commissioner also does not consider a lack of serious purpose or value to be enough on its own to make a request vexatious.
66. The Commissioner does not consider that the Council provided any detailed representations in relation to this factor. However, as stated in paragraph 64, the Commissioner noted the link between the complainant's work and the information requested, and acknowledged that this may indicate that the requests do not lack serious purpose or value.

### **Conclusion**

67. In this case, the Commissioner noted the Council's failure to supply representations relating to whether the requests lack serious purpose or value, or whether the requests are designed to cause disruption or annoyance. The Commissioner also considers that the Council did not demonstrate how complying with the two requests under investigation would have the effect of harassing the Council or causing distress to its staff.
68. However, the Commissioner is satisfied that the context and history of the two requests under investigation indicate a pattern of behaviour with regards to submitted successive requests for information on similar issues which could fairly be described as obsessive. The Commissioner is also satisfied the Council has demonstrated how responding to the two requests under investigation would, in all likelihood, lead to further requests and how dealing with continued requests would impose a significant burden in term of expense and distraction.
69. In this case, the Commissioner considers the conclusions set out at paragraph 68 to be strong enough to determine that the Council correctly applied section 14(1) of the Act.

### **Regulation 12(4)(b) – manifestly unreasonable**

70. Previously in this Notice, the Commissioner set out his view that part of the HQN report requested on 20 December 2008 contained environmental information, and, therefore, also fell under the provisions of the EIR. The Commissioner has therefore considered whether the Council correctly applied regulation 12(4)(b) to that information.
71. While the EIR contains no definition of the term ‘manifestly unreasonable’, the Commissioner considers that the word “manifestly” means that a request should be obviously or clearly unreasonable – there should be no doubt as to whether a request is unreasonable.
72. In view of the Information Tribunal’s findings in *Carpenter v Information Commissioner* (EA/2008/0046), the Commissioner is of the view that the factors to be considered when determining whether a request for information is vexatious may also be relevant when determining whether a request for information is manifestly unreasonable.
73. In this case, the Commissioner is satisfied that the arguments provided by the Council in relation to section 14(1) of the Act are also strong enough to engage regulation 12(4)(b) of the EIR in respect of the environmental information contained within the Housing Quality Network report.
74. In reaching this decision, the Commissioner has given particular consideration to the significant burden so far imposed by successive requests which have been generated as a result of the Council’s responses to previous requests. The Commissioner considers that the provision of the withheld information would be likely to lead to further requests for information, particularly when viewed in the context of the complainant’s tendency to submit successive requests following receipt of the Council’s response. In this case, the Commissioner considers these factors are indicative of a manifestly unreasonable request.
75. For the reasons set out above, the Commissioner’s view is that the exception provided by regulation 12(4)(b) is engaged and he therefore went on to consider the public interest in disclosure.

### **Public Interest Test**

76. In addition to demonstrating that regulation 12(4)(b) is engaged, regulation 12(1)(b) states that, in order to justify a refusal of a request for environmental information, a public authority must also be able to demonstrate that, in all circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
77. When considering the public interest test, public authorities should be mindful of the specific presumption in favour of disclosure provided by regulation 12(2) of the EIR. In effect, this means that if the factors on both sides of the test are balanced evenly, the public authority should disclose the information.

### **Public interest arguments in favour of disclosing the requested information**

78. The Commissioner has noted the Council's failure to supply arguments in favour of disclosing the requested information.
79. The Commissioner considers that there is an inherent public interest in the disclosure of environmental information; the general purpose of the EIR is to enable public access to 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 understand or to challenge a decision made, or action taken, by the public authority. This in turn promotes a sense of democracy and public participation.
80. The Commissioner also considers that the examples referred to in paragraph 20 will usually generate a high degree of public interest, especially with reference to issues such as asbestos, Legionella, anti-social behaviour, and any other issues which directly affect the general public's health and safety.

### **Public interest arguments in favour of maintaining the exception**

81. The Council has provided limited representations in relation to the arguments in favour of maintaining the exception at regulation 12(4)(b) of the EIR.
82. The Council stated that the report contains a number of inaccuracies, and it considers that it is not in the public interest to disclose inaccurate information. The Council stated that it considers the inaccuracies contained in the information would be misleading if disclosed. The Council has also advised the Commissioner that the complainant has already received a draft copy of the Council Housing Unit's Service Improvement Plan – a document produced following the mock inspection and the subsequent HQN report.
83. The Commissioner considers that a further argument in favour of maintaining the exception (not put forward by the Council) relates to the public interest in public authorities being able to deliver services to the wider community and to perform its core functions. The Commissioner considers that it is not in the public interest to divert resources away from those core functions in order to respond to requests for information. In view of this public interest argument, consideration would need to be given to the level of resources required to address the volume of correspondence, and the extent to which this is in the public interest.

### **Balance of the public interest arguments**

84. The Commissioner does not consider the Council's argument regarding the accuracy of the information to be necessarily relevant in this case. The Council's representations in applying regulation 12(4)(b) relate to the significant burden imposed on it by complying with the request for environmental information. As such, the Commissioner would expect that at least part of the Council's public interest considerations would relate to the diversion of resources. The

Commissioner considered it appropriate to address such factors even though the Council did not raise them.

85. The Commissioner is mindful of the presumption in favour of disclosure at regulation 12(2) of the EIR. The Commissioner considers that there is an inherent public interest in the disclosure of any report - such as the HQN report – that comments on a service provided by a Council department. This is because such reports will contribute to an understanding of whether the service provides value for money and the way in which the service could be improved. The Commissioner also acknowledges the strong public interest outlined at paragraph 80.
86. However, the Commissioner also considers there to be a very strong public interest in public authorities being able to carry out their core functions and wider obligations fully and effectively to ensure that the needs of the communities they serve are met. In this case, the Commissioner considers that the continued diversion of resources from core duties to respond to successive requests is significant. He also considers that the available evidence demonstrates that compliance with the requests of 20 December 2007 and 22 January 2008 would be likely to result in further requests and correspondence that would prolong the diversion of resources.
87. In this case, the Commissioner considers that the public interest is best served by a Council that is able to fulfil its core duties and serve the community free from the significant burden and distraction that these and the likely successive requests would cause. As such, the Commissioner has concluded that the public interest in maintaining the exception under 12(4)(b) outweighs the public interest in disclosing the information.

## **Procedural Requirements**

### **Section 10 of the Act – ‘Time for compliance’**

88. The Commissioner notes that the Council failed to inform the complainant whether it held the information requested not later than the twentieth working day following the date of receipt. As such, the Commissioner finds that the Council breached section 10(1) of the Act.

### **Regulation 11 of the EIR – ‘Representation and reconsideration’**

89. The Commissioner finds that the Council has breached regulation 11(4) of the EIR for failing to notify the applicant of its decision under regulation 11(3) no later than 40 working days after the date of receipt of representations.

### **Regulation 14 – ‘Refusal to disclose information’**

90. The Commissioner finds that the Council initially failed to consider part of the Housing Quality Network report under the EIR. As such, the Commissioner finds that the Council breached regulation 14(1) of the EIR in its handling of the request

on 20 December 2007 for not issuing a refusal notice stating that the information requested was exempt under regulation 12(4)(b).

91. The Commissioner finds that the Council breached regulation 14(2) for failing to issue a refusal no later than 20 working days after receipt of the requests.
92. The Commissioner finds that the Council breached regulation 14(3) for failing to state the exception relied on, and the matters considered in reaching its decision with respect to the public interest under regulation 12(1)(b).

## The Decision

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93. The Commissioner's decision is that the public authority was correct in its application of section 14(1) of the Act, and regulation 12(4)(b) of the EIR.
94. However, the Commissioner has decided that the public authority breached the following section of the Act:
  - Section 10(1).
95. The Commissioner has also decided that the public authority breached the following regulations of the EIR:
  - Regulation 11(4);
  - Regulation 14(1);
  - Regulation 14(2);
  - Regulation 14(3).

## Steps Required

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96. The Commissioner requires no steps to be taken.

## Other matters

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97. Part VI of the section 45 Code of Practice issued under the Act, and Part XII of the regulation 16 Code of Practice issued under the EIR make it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that procedure should encourage a prompt determination of the complaint. As the Commissioner has outlined in his guidance on this matter<sup>2</sup>, he considers that these internal reviews should be completed as promptly as possible. While no explicit timescale

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<sup>2</sup> [http://www.ico.gov.uk/what\\_we\\_cover/freedom\\_of\\_information/guidance.aspx](http://www.ico.gov.uk/what_we_cover/freedom_of_information/guidance.aspx) - 'Codes of Practice – Time limits for carrying out internal reviews'.



is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances, it may be reasonable to take longer. However, in no case should the time taken exceed 40 working days.

98. The Commissioner also recommends that the same timescales be followed for reviews held in accordance with regulation 11 of the EIR, which does apply a statutory maximum of 40 working days. The Commissioner is concerned that in this case, an internal review was completed only after his intervention and far beyond these timescales.

## Right of Appeal

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99. 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  
Arnhem House  
31 Waterloo Way  
Leicester  
LE1 8DJ

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

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 1<sup>st</sup> day of March 2010**

**Signed .....**

**Anne Jones  
Assistant Commissioner**

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

## Legal Annex

### Freedom of Information Act 2000

#### Section 10(1) – Time for Compliance

**Section 10(1)** provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

#### Section 14(1) – Vexatious requests

**Section 14(1)** provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious”

#### Section 17 – Refusal of request

**Section 17(7)** provides that –

“A notice under section (1), (3) or (5) must –

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50.”

### Environmental Information Regulations 2004

#### Regulation 2 - Interpretation

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

“the Act” means the Freedom of Information Act 2000(c);

“applicant”, in relation to a request for environmental information, means the person who made the request;

“appropriate record authority”, in relation to a transferred public record, has the same meaning as in section 15(5) of the Act;

“the Commissioner” means the Information Commissioner;

“the Directive” means Council Directive 2003/4/EC(d) on public access to environmental information and repealing Council Directive 90/313/EEC;

“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;
- (d) reports on the implementation of environmental legislation;
- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c) ; and
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of elements of the environment referred to in (b) and (c);

“historical record” has the same meaning as in section 62(1) of the Act;

“public authority” has the meaning given in paragraph (2);

“public record” has the same meaning as in section 84 of the Act;

“responsible authority”, in relation to a transferred public record, has the same meaning as in section 15(5) of the Act;

“Scottish public authority” means –

- (a) a body referred to in section 80(2) of the Act; and
- (b) insofar as not such a body, a Scottish public authority as defined in section 3 of the Freedom of Information (Scotland) Act 2002(a);

“transferred public record” has the same meaning as in section 15(4)of the Act; and

“working day” has the same meaning as in section 10(6) of the Act.

## **Regulation 11 - Representation and reconsideration**

**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(2)** Representations under paragraph (1) shall be made in writing to the public authority no later than 40 working days after the date on which the applicant believes that the public authority has failed to comply with the requirement.

**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 11(4)** A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the receipt of the representations.

**Regulation 11(5)** Where the public authority decides that it has failed to comply with these Regulations in relation to the request, the notification under paragraph (4) shall include a statement of –

- (a) the failure to comply;
- (b) the action the authority has decided to take to comply with the requirement; and
- (c) the period within which that action is to be taken.

## **Regulation 12 - Exceptions to the duty to disclose environmental information**

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

**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 - Refusal to disclose information**

**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(2)** The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.

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

- (a) any exception relied on under regulations 12(4), 12(5) or 13; and
- (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).

**Regulation 14(4)** If the exception in regulation 12(4)(d) is specified in the refusal, the authority shall also specify, if known to the public authority, the name of any other public authority preparing the information and the estimated time in which the information will be finished or completed.

**Regulation 14(5)** The refusal shall inform the applicant –

- (a) that he may make representations to the public authority under regulation 11; and
- (b) of the enforcement and appeal provisions of the Act applied by regulation 18.