

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

**Date:** 19 October 2011

**Public Authority:** Norwich City Council  
**Address:** City Hall  
Norwich  
NR2 1NH

**Decision (including any steps ordered)**

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1. The complainant requested information relation to a tendering procedure for the development at Threescore in Bowthorpe. This request was refused under section 14(1) as the request was considered vexatious.
2. The Commissioner's decision is that Norwich City Council ('the Council') should have handled the request under the Environmental Information Regulations 2004 ('the EIR') as opposed to the Freedom of Information Act 2000 ('the Act'). The Commissioner has also concluded that the request was not manifestly unreasonable.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
  - disclose the information to the complainant in accordance with regulation 5 of the EIR; or
  - issue a valid refusal notice explaining the reasons why it will not disclose this information in accordance with regulation 14 of the EIR.
4. The public authority must take these steps within 35 calendar days of the date of this Decision Notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## **Request and response**

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5. On 6 January 2011, the complainant wrote to the Council and requested information in the following terms:  
  
"Copies of details as to how the decision was made, and process of the tendering procedure for the development of Threescore in Bowthorpe, and specifically the timing and minutes from meetings where this was decided"
6. The Council responded on 3 February 2011. It stated that it was refusing the request under section 14(1) of the Act (vexatious requests).
7. The complainant requested an internal review of the Council's decision on 3 February 2011.
8. On 18 February 2011 the Council provided the outcome of its internal review. It stated that it upheld its decision to refuse the request for the reasons set out in its refusal notice of 3 February 2011.

## **Scope of the case**

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9. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He referred to a Court Order which had been issued by the High Court of Justice in March 2010. The Court Order found in favour of the complainant and required the Council to pay costs to the complainant and to agree to various undertakings in relation to future contact with the complainant. He believed that the Council's refusal of the request was in contravention of the Court Order.
10. The Commissioner considers that the focus of the complaint is to establish whether the Council was correct to refuse to comply with the request as it considered it to be vexatious.

## **Reasons for decision**

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### **Correct Access Regime**

11. The first thing that the Commissioner has considered is whether the request should have been handled under the provisions of the Act or the EIR

12. The EIR define what constitutes environmental information in regulation 2(1). The request in this case relates to information about the decision making process and tendering procedure for a planned development. Any proposed development is likely to have an effect on the elements of the environment, and in particular, land and landscape.
13. The Commissioner has considered that the requested information relates to information which would fall within the definition given at regulation 2(1)(c): "Information on... 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 designed to protect those elements.". The Commissioner considers that the requested information falls within the definition of regulation 2(1)(c) because it is information on a measure (the proposed development), which is likely to affect the elements and factors of the environment.
14. The Council originally processed the complainant's request for information under the Act and refused the request under section 14(1) of the Act. However, the Commissioner considers the information requested constitutes environmental information and that the correct access regime is, therefore, the EIR.
15. When the Commissioner wrote to the Council on 16 August 2011, he advised that, based on the nature and wording of the request, he considered the request to be for environmental information, and as such, the correct access regime was the EIR. The Commissioner asked the Council if it agreed with this assessment and if it would reconsider the case under the EIR. The Council responded to the Commissioner stating that it did not agree the request should have been handled under the EIR it related to the processes connected with the granting of contracts. In the Council's view, there was no direct link back to elements of the environment.
16. As the Commissioner has determined that the request was for environmental information, in view of the Council's stance, he has read across to the EIR for the most similar exception and therefore has considered whether regulation 12(4)(b) (manifestly unreasonable requests) applies in this case.
17. Whilst the Commissioner has issued no specific guidance on regulation 12(4)(b) he is satisfied that the principles to be considered when looking at a case under section 14 of the Act are also relevant when considering if a request is manifestly unreasonable under regulation 12(4)(b) and notes that this approach has been supported by the Information Tribunal in the case of *Stephen Carpenter v Information Commissioner*

& Stevenage Borough Council [EA/2008/0046]. In this case, the issue arose as to whether regulation 12(4)(b) could be applied in the same way as s.14 was applied under the Act. The complainant had argued that decisions in relation to vexatious requests had "no bearing" on the meaning of the words "manifestly unreasonable" and as such requested that they should not be referenced by the parties or the Tribunal. However, the Tribunal said at paragraph 8:

"...The Tribunal declined this request on the basis that those decisions might well have a bearing on the matter on which the Tribunal had to decide"

18. In reaching its conclusion, the Tribunal also said it "...reminds itself of the principles that have emerged in relation to section 14 FOIA..." (para 51) and then went on to apply those principles to the circumstances of the case to conclude that the requests were manifestly unreasonable. Thus, the Commissioner accepts that the principles to be considered when looking at vexatious requests under the Act can also be applied to cases involving Regulation 12(4)(b) although the following points should be borne in mind:

a) The term 'manifestly unreasonable' is a wider concept than the term 'vexatious' under the Act and thus Regulation 12(4)(b) may also relate to cases involving costs issues.

b) Also, Article 4 of the Directive upon which the Regulations are based states that the exceptions should be interpreted in a "restrictive way" although this is likely to have more application to cases where Regulation 12(4)(b) has been argued in relation to costs.

c) There is a presumption in favour of disclosure at Regulation 12(2).

d) Regulation 12(4)(b) is an exception and thus is subject to the public interest test (Regulation 12(1)(b))

e) Furthermore, the background and pattern of any requests also made under FOIA **can** be taken into consideration under Regulation 12(4)(b);

f) Finally, each case is of course determined on its own circumstances.

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

19. Regulation 12(4)(b) states that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable. While the EIR contains no definition of the term "manifestly unreasonable", it is the Commissioner's view that

“manifestly” means that a request should be obviously and clearly unreasonable – there should be no doubt as to whether a request is unreasonable.

20. As stated at paragraph 17 above, the Commissioner believes that the principles to be considered when looking at a case under section 14 of the Act are also relevant when considering if a request is manifestly unreasonable under regulation 12(4)(b). The Commissioner considers the following five factors should be taken into account when considering whether a request can be accurately characterised as vexatious.
- i. Whether compliance would create a significant burden in terms of expense and distraction.
  - ii. Whether the request is designed to cause disruption or annoyance.
  - iii. Whether the request has the effect of harassing the public authority or its staff.
  - iv. Whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable.
  - v. Whether the request has any serious purpose or value.

21. The Council provided representations to support its view that the request was vexatious under the headings listed above in its refusal notice of 3 February 2011. It did not offer any further representations either at the time of its internal review or when the Commissioner specifically asked for further representations in support of its position.

*Would compliance create a significant burden in terms of expense and distraction*

22. The Council believe the request imposes a significant burden by virtue of the repeated nature of the requests. It is also of the view that the complainant will continue submitting requests, regardless of any response from the Council.
23. The Council provided a schedule detailing the contact with the complainant since April 2008. The schedule lists the following communications from the complainant:
- 3 communications between April and October 2008
  - 10 communications between March and December 2009
  - 14 communications between January and June 2010

24. The Commissioner notes that some of the contacts refer to earlier communications and requests. For example, on 21 April 2008 the complainant requested all information relating to himself and his business. The complainant's subsequent contacts of 13 September 2008 and 8 May 2009 relate to this original request as he believes he had not been provided with all the relevant information held by the Council. In addition, some of the communications are merely chasing the Council for a response to earlier requests.
25. Many of the contacts from the complainant to the Council refer to the legal case which resulted in the issuing of a Court Order. The Commissioner understands the complainant sought an injunction against the Council in respect of comments made about his business at a particular meeting in March 2008, which were recorded in the minutes of the meeting. Through mediation, the parties reached terms of settlement, which included damages being awarded to the complainant. The Court Order issued on 19 March 2010 required the Council to take certain steps to retract its comments and provide undertakings in relation to future dealings with the complainant and his business.
26. The Commissioner accepts that the complainant has contacted the Council on at least 27 occasions over a two year period and the frequency of these communications could create a burden on the Council. He notes that the majority of contacts related to the dispute which was resolved via the Courts in March 2010. However, given the fact that since July 2010 the complainant has only submitted one request, he does not accept the Council's view that the complainant will continue to submit requests, regardless of the Council's response. The Council has not provided any detail or evidence to suggest that it has already spent a considerable amount of time or expense in responding to the complainant previously. The Commissioner has therefore given little weight to the Council's argument that compliance would create a significant burden in terms of expense and distraction.

*Whether the request is designed to cause disruption or annoyance*

27. The Council submitted limited arguments in support of its position that the request is designed to cause disruption or annoyance. It stated that the frequency and tone of the requests suggested the purpose was to cause disruption and annoyance. The Council referred specifically to a communication from the complainant of 21 June 2010. This communication asked for all information with regarding to the legal case concluded via the Court Order, information about a particular email he had sent the Council, and details as to how the Council had complied with a particular direction associated with the Court Order.

28. As this factor relates to the requester's intention, it can be difficult to prove. Cases where this is a strong argument are therefore likely to be rare. However, if a requester explicitly states that they want to cause maximum inconvenience, the request will almost certainly be vexatious.
29. In the Commissioner's view there is insufficient evidence to suggest that the complainant had the intention of causing disruption or annoyance when making the requests.

*Whether the request has the effect of harassing the public authority or its staff*

30. The Council's view is that the substance of requests submitted by the complainant manifest an animosity towards the Council. The Council refer to the fact that communications from the complainant continue to make reference to the legal cases, despite a Court Order having been issued in March 2010. Also, the Council advise that the complainant communicates with a number of different officers, and he refers to the legal case in communications despite the fact that those officers had no involvement in the legal case. As a result of this, and allegations and adverse comments contained within the complainants' communications, the officers feel compelled to refer the communications to the legal services team. The Council allege that this pattern of behaviour leads to a disruptive effect on its business. The Council has provided examples of allegations and disparaging remarks contained within communications from the Council, which are detailed below:

"Given prior unlawful conduct of Norwich Council staff in these meetings, please kindly ensure that this request is fully complied with such that this practice may be satisfied the Council are complying with the High Court Order, and not pursuing further unlawful defamation."

"I note that in spite of the Green Party strong position in Norwich, the city still has a shambolic record in recycling. I would suggest that the Council reflect on how the Council treat individuals such as myself, who pleaded for month after month to have the Council collected recycled material, only for the Council to fail in collections time after time and then disgracefully Council staff make entirely false allegations about shredded paper and fly-tipping to cover up their sheer incompetence to act in the public interest. Such actions were absolutely shameful of the Council."

"It would seem to me, not for the first time, Norwich City Council are making it up as they go along; however, I would respectfully note the continued and persistent damage the Council are unreasonably causing to me business and reputation."

31. The Commissioner accepts that continuing to refer to the legal case, particularly in correspondence with officers who had no involvement in the case may potentially have the effect of harassing the Council. He also accepts that officers may have found it necessary to consult with the legal services department when communications from the complainant referred to the legal case and allegations of unlawful conduct. However, the Commissioner does not agree that having to refer such communications to the legal department would necessarily have a significant disruptive effect.
32. The Commissioner has noted the tone and content of the complaints contacts with the Council. Apart from referring to "unlawful deformation" and "unlawful conduct" by the Council (which is related to the legal case), the Commissioner does not consider that any of the communications could be reasonably viewed as being 'harassing' in nature. Whilst individual officers are referred to in relation to particular emails and incidents, the Commissioner can see no evidence that the complainant has targeted any particular staff. Whilst it may in practice be the case that particular staff have necessarily been involved in dealing with the requests because of their job role within the public authority, the Commissioner can see no direct intention to target particular staff by the complainant. The Commissioner also notes that, aside from references to "unlawful deformation" and "unlawful Conduct", generally all of the requests are written in a reasonably polite and professional manner. The examples of comments from the complainant provided by the Council might reasonably be categorised as robust questioning, sometimes articulated in fairly critical tones. However, the examples do not appear to the Commissioner to cross the line into behaviour which would cause distress or be seen as harassing to individual officers.
33. The Commissioner notes that, in relation to this particular request, there is no mention of the legal case, or any accusations or disparaging remarks against the Council.
34. The Commissioner considers that the Council has not provided strong enough arguments to demonstrate how complying with the request under investigation could cause distress to Council staff.

*Whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable*

35. The Council argue that the frequency and tone of the requests, and the complainant's frequent references to the legal case demonstrates a pattern of obsessive behaviour. In addition, despite the fact that the legal case was designed to settle the dispute between the Council and



the complainant, he has continued to make reference to the legal case after it was settled. In its refusal notice, the Council stated that:

“Notwithstanding that the authority has never contracted with you for services or appointed or engaged you in any formal or informal role whatsoever, you have nevertheless managed to maintain a high volume of correspondence with the authority based purely on complaints and grievances.”

36. The complainant advised the Commissioner that as well as the legal case finding in his favour he made a complaint to the Local Government Ombudsman ('the LGO') about the Council. The complaint to the LGO related to a tender exercise which commenced in May 2010. Whilst the subject of the legal case is referred to in the complaint to the LGO, the complaint to the LGO relates to a completely separate incident – a tender exercise undertaken in May 2010. The LGO determined that there had been administrative fault on the part of the Council in respect of the tender exercise and proposed a monetary remedy to reflect the maladministration. This LGO issued the outcome of the complaint on 31 March 2011.
37. The complainant does not accept that his request is vexatious, and is of the view that the Council treating it as such is in direct contravention of the Court Order. The complainant believes his request is entirely reasonable given the Council's pattern of behaviour toward him and his company, and the fact that both the legal case and the complaint to the LGO both found in his favour.
38. It is the Commissioner's view that obsessive requests are usually a very strong indication of vexatiousness. Relevant factors could include the volume and frequency of correspondence, requests for information the requester has already seen, or a clear intention to use the request to reopen issues that have already been debated and considered.
39. If this were the only request that the complainant had made to the Council, it is likely that the information, if held, would have been provided. It is clear to the Commissioner that the reason the request was refused was due to the history of prior dealings and contact with the complainant. To that extent, this case is not unusual and the Commissioner has found, in several cases, that history and context are important considerations when determining whether a request is obsessive.
40. The Commissioner notes that there is a history of contact and various disputes between the complainant and the Council. The contacts primarily relate to comments made at a Council meeting about the

complainant's business (the subject of the legal case), and concerns the complainant has that his company has been disadvantaged in a number of tender exercises. Although much of the correspondence is concerned with the same general issues, it is apparent that this is borne out of frustration with the Council in dealing with his requests, and what he perceives to be its continued adverse treatment of his company.

41. It appears that the complainant started contacting the Council and submitting requests following the comments made by one of its officers about his company in March 2008. Since this dispute was resolved via the Court Order on 19 March 2010, the complainant has contacted the Council on 14 occasions. Of these contacts, 7 relate specifically to the legal case itself and queries as to how and when the Council complied with the relevant directions. On 11 June 2010 the complainant requested information about a particular tender exercise, and made two follow up related requests on 6 July 2010. Of the remaining three requests one relates to a request for a copy of a particular tender, one to a planning application for a development, one about parking fines issued to taxis and the request which is the subject of this notice. This request appears to be the only contact from the complainant to the Council since July 2010.
42. The Commissioner's guidance states that it is easiest to identify an obsessive request where an individual continues with a lengthy series of linked requests even though they have independent evidence on the issue, or it has been the subject of an internal or independent investigation. In correspondence to the Council, the complainant continued to refer to the legal case after it was concluded despite being advised that such contact should be referred to Council appointed solicitors. This could suggest that the complainant was attempting to re-open matters which had previously been addressed. However, The Commissioner notes that the Court Order required the Council to take a number of steps "forthwith". This included sending a letter of apology to the complainant and issuing directions to relevant Council officers. It appears that it took the Council around three months to comply with some of the steps outlined in the Court Order. The Commissioner can therefore understand to an extent why the complainant made such queries of the Council, albeit he accepts that it may have been more appropriate if queries regarding the legal case may have been more appropriately channelled to the Council's appointed solicitors.
43. It also does not appear to the Commissioner that the complainant has continued to request information already in his possession. In particular, his requests specifically relating to tender exercises appear to relate to different tender exercises undertaken by the Council.

44. The correspondence up to July 2010 does suggest that the complainant has frequently contacted the Council; however he appears to be making valid complaints and requests. The request which is the subject of this notice is a request for information regarding a particular tender exercise. The complainant does not appear to have requested this information previously. In addition, the Council has not submitted any arguments to suggest that compliance with the request itself would impose a significant burden in terms of expense or diversion of resources.
45. Based on the evidence available to him, the Council has not provided sufficient arguments to support its view that this request can be fairly characterised as obsessive or manifestly unreasonable.

*Whether the request has any serious purpose or value.*

46. The Council believe the subject matter of recent requests from the complainant can be split into two categories – the legal case and the Court Order issued as a result, and information concerning a tender exercise. In relation to the legal case, the Council is of the view that the complainant is trying to show that the Council is in breach of the terms of the Court order through submitting information requests. The Council confirm that the legal case is being handled by its appointed solicitors and all communication should be directed through this channel. However, despite the availability of this communication channel, the complainant has continued to submit information requests referring to the legal case.
47. The Council advise that the tendering exercise which is the focus of this request is one that the complainant's business tendered for and was unsuccessful. The Council confirmed that the work which was tendered for has been cancelled due to budgetary constraints. The Council therefore believe that even if there was any substance in the complainant's suggestion that his company was treated unfairly in the tender process (a suggestion which the Council strongly rejects), it believes there is no purpose to be served through examination of the tender process as the project has been discontinued.
48. The Commissioner accepts that if there is an agreed communication route in respect of the legal case it would be appropriate for any queries relating to the case to be directed through that route. Whether or not the project has been cancelled has no bearing on the original decision making or the tender process associated with the project. As such, the Commissioner does not accept that, the request in this case has no serious purpose of value just because the project to which it relates has been discontinued.

*Conclusion*

49. The Commissioner's decision is that the available evidence does not demonstrate that the request is manifestly unreasonable and he therefore finds that regulation 12(4)(b) is not engaged in this case. As the exception is not engaged, the Commissioner has not gone on to consider the public interest test inherent in this exception.

## Right of appeal

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50. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

51. 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.
52. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Signed** .....

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**