

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

**Date:** 4 July 2013

**Public Authority:** Tandridge District Council  
**Address:** Council Offices  
Station Road East  
Oxted  
Surrey  
RH8 0BT

**Decision (including any steps ordered)**

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1. The complainant has requested information related to a planning appeal regarding a specific address. The council applied the vexatious provision at section 14 of the FOIA. The Commissioner's decision is that the information is environmental and the council is able to rely upon regulation 12(4)(b) as the request is manifestly unreasonable. He does not require any steps to be taken.

**Background**

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2. The requested information relates to a planning matter involving Tandridge District County Council, Surrey County Council and a third party. A change of use to a premises and a cross over widening to facilitate parking at the site were approved. The complainant considers that the planning approvals have resulted in reduced access to her property as the neighbouring business often parks its vans on the forecourt to the premises, blocking access to her parking area. As a result changes were made to the layout of the area to facilitate her access abilities however she remains unhappy with this new layout.
3. A Local Government Ombudsman's ('LGO') investigation into the planning decisions found maladministration on a relatively minor point, and the councils were ordered to pay compensation and issue apologies

to the complainant. However she remains dissatisfied at this and has continued to seek information from the council for a number of years leading eventually to the request in this case, amongst other requests under the legislation. She has also been involved in private litigation with the third party in this case, seeking to reassert her right of way over the parking area.

## **Request and response**

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4. On 4 September 2012, the complainant wrote to Tandridge District Council ('the council') and requested information related to parking and a planning appeal at a specific address. The full text of the request is contained in the annex to this decision notice.
5. The council responded on 25 September 2012 and refused to provide the requested information citing the provision for vexatious requests at section 14 of the FOIA.
6. The complainant requested an internal review on 29 November 2012. The council provided its internal review response on 3 December 2012 in which it maintained its original position.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 25 September 2012 to complain about the way her request for information had been handled. The Commissioner informed the complainant that she should request an internal review and, after having done so, she wrote again on 1 January 2013 to complain that the council was continuing to withhold the information.
8. The Commissioner considers that the information is environmental information under regulation 2(1)(c) of the EIR, the text of which is provided in the legal annex to this notice. He is satisfied that the information in question is information on a measure (i.e. a planning application) to change the use of land and to make changes to a shop frontage and involves discussions surrounding the use of the forecourt, the widening of a vehicle crossover and parking issues relating to this.

## Reasons for decision

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### Regulation 12(4)(b) – Manifestly unreasonable

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

“For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –

(b) the request for information is manifestly unreasonable;”

10. The Commissioner recognises that, in practice, there is no material difference between a request that is vexatious under section 14(1) of the FOIA and a request that is manifestly unreasonable on vexatious grounds under the EIR. The Commissioner has therefore considered the extent to which the request could be considered as vexatious.

11. The term ‘vexatious’ is not defined in the legislation. In *Information Commissioner vs Devon County Council & Dransfield*<sup>1</sup> the Upper Tribunal took the view that the ordinary dictionary definition of the word vexatious is only of limited use, because the question of whether a request is vexatious ultimately depends upon the circumstances surrounding that request. The Tribunal concluded that ‘vexatious’ could be defined as the “...manifestly unjustified, inappropriate or improper use of a formal procedure” (paragraph 27). The decision clearly establishes that the concepts of ‘proportionality’ and ‘justification’ are central to any consideration of whether a request is vexatious.

12. In the *Dransfield* case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) and harassment or distress of and to staff. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it

stressed the “importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of

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<sup>1</sup> UKUT 440 (AAC) (28 January 2013)

dealings, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).

13. The Commissioner will therefore consider whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to the serious purpose and value of the request.
14. The council drew the Commissioner's attention to his own guidance on the subject 'Dealing with vexatious requests'<sup>2</sup> which states at paragraph 54 that the context and history in which a request is made will often be a major factor in determining whether the request is vexatious. It explained that over the last few years the complainant has made a very large number of information requests relating to the planning history of the specific address and provided the Commissioner with four large folders which constitutes its correspondence file with the complainant. It said that it has always tried to answer the requests to the best of its ability and in reply to one such request on 9 March 2010 the complainant was sent copies of the entire planning history of the specific address between the years 2000 and 2004, that being the period during which the dispute in question arose. The only deletions made were certain redactions of private names, addresses, telephone numbers and signatures in order to comply with the provisions of the Data Protection Act 1998. It stated that over the years the council has also supplied the complainant with many other items relating to the property and to the disputed planning applications, including correspondence passing between its legal and planning departments when the planning department agreed to waive any legal privilege attaching to these documents. As a result the council therefore consider that the complainant already has all the necessary information relating to the property from which she will be able to deduce all the answers to the various questions set out in freedom of information request dated 4 September 2012 and that if any of her questions cannot be answered from documents already in her possession, then they also cannot be answered from documents currently in the council's possession.
15. The council stated that it believes the case of Information Commissioner vs Coggins<sup>3</sup> is of relevance in this case. In Coggins, the complainant, sent the local authority 20 freedom of information requests, 73 letters

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<sup>2</sup>

[http://www.ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/dealing-with-vexatious-requests.ashx](http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx)

<sup>3</sup> Appeal number EA/2007/0130

and 17 postcards, all dealing with the same subject, over a period of two years which the tribunal found caused a 'significant administrative burden' (paragraph 28). The council pointed out that the complainant in this case has persisted with her campaign for a much longer period than Mr Coggins and that she has submitted a much greater volume of freedom of information requests. is also considered to be of relevance in this case.

16. The Commissioner is also aware of a significant number of freedom of information and data protection requests and correspondence relating to the same issue which have been made to this council, Surrey County Council and Surrey Police. He has previously issued a decision notice on a complaint against Surrey County Council which upheld the council's decision that all information which it held had been provided to the complainant (FER160254) and he also issued a decision notice, again on the same issue, against this council following which further information was provided to her (FS50198525). The council in that instance did not claim that the request was manifestly unreasonable or vexatious and so this issue was not raised in that decision notice. However, a decision notice was issued where the Commissioner upheld Surrey County Council's application of section 14 of the FOIA on 25 January 2010.
17. The council pointed out that the vitriolic abuse directed at members and officers of the council in much of her earlier correspondence, including correspondence in which she was making freedom of information requests, displays that the complainant has an obsessive and irrational hatred directed against the council. It considers that her constant stream of freedom of information requests are not designed to elicit information which could be of any use to her but rather to cause as much disruption to the work of the council and harassment of its staff as possible. The Commissioner notes that that the manner in which the complainant engages with the council is often confrontational and marked by sarcastic, aggressive or manipulative language and believes that this manner would have had the effect of harassing and distressing council officers dealing with her correspondence.
18. The Commissioner also notes that the correspondence to the council, and to the Commissioner, contains some serious threats and allegations. Whilst the Commissioner is unable to elaborate upon the content of these allegations further in this decision notice, having considered the content of these allegations, he considers that they would have the effect of harassing or distressing council staff.
19. The council also stated that complying with the request would create a significant burden in terms of expense and distraction. It explained that the officer who originally dealt with this matter and who had considerable knowledge of all its complexities, is no longer with the

council, and in order to answer all the various points raised by the complainant, his successor would need to familiarise herself in detail with the complex planning history of this site and the large number of documents involved. It stated that this would involve her being distracted from her other duties for a period of possibly several days, and considered that this would not be a productive use of council resources at a time of financial stringency when local authorities are being encouraged to make the best possible use of all resources, including staff time.

20. In relation to the serious purpose or value of the request, the council stated that given that the entire planning history of the property has been supplied to the complainant, answering her further questions would not result in any new information being released into the public domain and the council therefore questions whether this request was made with any serious purpose in mind other than to feed the complainants continuing obsession with a dispute arising some ten years ago in respect of a property where she no longer lives. It referred to paragraph 47 of the Commissioner's aforementioned guidance on the subject which lists a number of scenarios in which a request might be seen to have no serious purpose and considered that this request fits firmly into the last of these, namely that she is pursuing a relatively trivial or highly personalised matter of little if any benefit to the wider public.
21. The Commissioner considers that the fact that the LGO has already carried out an investigation of the councils' involvement in the matter is of significant relevance in this case is. He considers that the council can establish a case for saying that the request sought to reopen a complaint which has already been satisfactorily adjudicated upon by the appropriate regulator. The Commissioner notes, from a letter to an MP from the council, that the LGO found that the council acted reasonably and the main problem, as the council always contended, was inconsiderate parking by various drivers who park on and off the forecourt – which the council is not responsible for controlling as it is a private matter between the parties. The LGO did find that council could have kept better notes about the forecourt turning proposals included as part of the planning applications but that did not affect view that complaint should not be pursued. The LGO's report required an apology and compensation to be paid and the council subsequently did this.
22. In this case, the Commissioner considers that the complainant has crossed over the line between persistence and obsessiveness by forcing the council to repeatedly visit an issue that it has already considered; an issue that can be, and has been, looked at by objective body.

23. On the part of the complainant, there has not been any suggestion that the request should be seen other than in the light of her continuing dispute. The Commissioner considers that compliance with the request would be likely to result in further correspondence and has seen no evidence to suggest that providing the requested information in this specific request would satisfy the complainant or bring an end to the correspondence.
24. In assessing the purpose and value of this request, the Commissioner is mindful that the request argues points rather than asking for new information, raises issues which have already been fully considered by the council and continues to challenge the council for alleged wrongdoing without any obvious basis for doing so.
25. The council summarised its response to the Commissioner by stating the following;

"In this case it is considered that [the complainant] has no adequate or proper justification for her request, that she has displayed an obvious lack of proportionality in her previous dealings with the Council and that her request can therefore be considered to constitute the manifestly unjustified, inappropriate and improper use of the formal procedure laid down by the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 in order to further her own private campaign against the Council. The amount of disruption which her requests have caused to the work of the Council, particularly its planning department, is quite disproportionate to any public interest which may have been served by them."

26. Returning to the findings of the Upper Tribunal in Dransfield, and its view that a holistic and broad approach should be taken in respect of section 14(1), the Commissioner has decided that the council was correct to deem the request vexatious. He has balanced the purpose and value of the request against the detrimental effect on the council and is satisfied that the request reflects the complainant's desire to keep her dispute alive, rather than to access recorded information. The Commissioner finds no substantive justification for the request, and is satisfied that compliance would prolong correspondence and constitute an unfair burden on the council. Accordingly the

Commissioner finds that regulation 12(4)(b) is engaged.

### **Public Interest Test**

27. Regulation 12(1)(b) requires that a public interest test is carried out in cases where regulation 12(4)(b) is engaged. The test is whether in all the circumstances of the case the public interest in maintaining the

exception overrides the public interest in disclosing the information. When considering his decision the Commissioner must also bear in mind the presumption in favour of disclosure provided by regulation 12 (2).

### **The public interesting in disclosing the information**

28. The council has stated that given it believes this request to be obsessive, to have been made with no serious purpose, to be designed to cause disruption or annoyance and to have the effect of harassing the council and its staff, there are no public interest arguments in favour of disclosing this information. It said that the information sought is considered to be of interest only to the complainant and not of any interest whatsoever to the wider public.
29. The Commissioner considers that the public interesting in disclosing the information in this case relates to the transparency and accountability of the actions which the council took in dealing with the planning applications. There is an onus on public authorities to act transparently in the planning decisions they take, and disclosure of this information may shed further light on the council's actions in agreeing a planning application in this instance. The Commissioner notes however that this is not a case where the planning approval affected a large number of the public.

### **The public interest in maintaining the exception**

30. The council submitted that compliance with this request would only encourage further similar requests from the complainant and from other obsessive complainers. It also said that compliance with the request would involve would create a significant burden in terms of expense and distraction at a time when local authorities are being encouraged to make the best possible use of all resources, including staff time. It stated that it is not in the public interest for Council Tax payers' money to be spent or staff time to be diverted from more productive work in assisting the private vendettas of obsessive complainers.
31. The Commissioner considers that there is little wider public interest in requiring the disclosure of this information because the issue affects relatively few people beyond those living directly on the site. He recognises compelling arguments in favour of maintaining the exception in this case because of the public interest in protecting the integrity of the EIR and ensuring that they are used responsibly. While public authorities are being encouraged towards goals of transparency and accountably which benefit the public as a whole, it is not the intention of the legislation to require that public authorities tolerate the harassment of their officials by individuals who demonstrate obsessive behaviour when seeking information. If the Commissioner were to find that such



behaviour is appropriate, he considers that the legislation would be seriously undermined. The Commissioner is strongly of the opinion that public authorities should be able to concentrate their resources on dealing with legitimate requests rather than being distracted by requests that have little or no merit and where the wider public interest would not be served by the disclosure of information.

32. In balancing these considerations, the Commissioner has had regard to the fact that the volume of requests and correspondence which has been submitted over a long period of time has placed a significant burden on council resources. He considers that requiring the council to respond to this request would disrupt its everyday work, diverting a disproportionate amount of resources from its core business.
33. The Commissioner has taken into consideration that the council has worked with the LGO and responded positively in response to her findings. He considers that it does not seem likely that responding to the request will satisfy the complainant as regardless of the information it provides in response to her requests the complainant continues to question the council's motives, allege various wrongdoings and maintains that it is not open honest and transparent. It is the Commissioner's view that these factors lessen the public interest in requiring the council to respond further to her request.
34. In view of the above, the Commissioner considers that in all the circumstances of this case, the public interest in maintaining the exception under regulation 12(4)(b) outweighs the public interest in disclosing the information and therefore finds that the request is manifestly unreasonable.

## Right of appeal

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35. 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)

36. 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.
37. 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**

## Annex

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Request made on 4 September 2012 via the WhatDoTheyKnow website:

"I refer to the planning appeal by [named individual], on behalf of DB Enterprises, against conditions attached to changes of use at 7 High Street, Lingfield, the former Scats shop.

The council will recall this is the site where parking spaces were approved that blocked access for neighbours. The permissions followed months of deliberations specifically about whether parking should be approved at the site (including a request for more time from the highways authority).

Following an investigation into the conditions, further demands from the applicant and the parking of numerous large commercial vans in Lingfield High Street, the district council agreed to unregulated parking on the forecourt in order to accommodate the applicant's building maintenance company (allegedly 20 employees, plus the use of 20 contractors).

(1) In paragraph 7.3 of its appeal submission the council states: "...including if necessary arranging a joint meeting between the appellant and adjoining residents to see if a mutually convenient parking solution could be negotiated, given good will on both sides. A letter to the appellant was sent to this effect on 18 May this year. See Appendix V."

Appendix V is a letter dated 18 May telling DB Enterprises that the highways authority was prepared to "relax its requirements". There is no suggestion of a joint meeting between the applicant and neighbours.

(i) I would be grateful if you would check whether the correct document was supplied with the Appendix. Please provide a copy of the letter from Tandridge to the appellant that suggests a joint meeting with neighbours.

(2) The Appendix V letter also states the district council has enclosed forms so that DB Enterprises can submit a new application for a shopfront and parking layout.

In 2006 Surrey County Council officers (including the director of transportation east, highways officer Carol Drinkwater, and senior council officer Roger Hargreaves) claimed to have examined plans submitted by [named individual] showing two 4.8m parking spaces on

the

forecourt; the council stated two 4.8m parking spaces had been approved.

However, all the plans put into the public arena relating to the forecourt parking show one space at 5m and a second space that varies between around 4.6m and 4.3m depending on which set of drawings is examined.

The county council ignored a subsequent request for a copy of the plans officers declare showed two 4.8m spaces.

(i) Please confirm whether the district council received a formal (or informal) application from DB Enterprises, or anyone acting on behalf of DB Enterprises, showing two 4.8m parking spaces between May 2005 and February 2007.

This includes any applications where the decision was then made that no planning permission would, after all, be required or where an agreement was made that planning permission would be granted and/or formally (ie publicly) acknowledged at a later date.

(ii) Please confirm whether an "informal agreement" (or planning approval not yet formally acknowledged) exists that includes an additional parking space to the side of the building.

(3) The letter (Appendix v) states: "If you would like a further meeting with your advisor I would be pleased to arrange one at your convenience".

(i) Please explain the role of the "advisor" referred to.

(ii) Was the advisor a council officer (or, indeed, councillor) with either Tandridge or Surrey councils?

If yes, from which department?

(iii) How long had the advisor (or any previous advisor supplied by either council) been advising DB Enterprises by 18 May 2005?

(iv) Did DB Enterprises have the assistance of an "advisor" during negotiations for either of the two planning permissions granted since 2000.

(v) Did the advisor provide advice to DB Enterprises during any of the years 2006 to present?

(4) Documents supplied by Tandridge District Council under Freedom of Information include a letter from the council to DB Enterprises in which the council claims to have approached the neighbour at 2 The Twitten with suggestions for a joint meeting, but that the neighbour had refused. As a result, the officer writes, the parking on the forecourt remains "essentially a private matter".

This does not tally with correspondence received by the neighbour, nor was any such suggestion ever made verbally.

(There is even an email to the neighbour from the council in which the officer claims to have been authorised to set up a meeting by the development control committee; however, the officer acknowledges, due to the submission of the appeal, no such proposal was made.)

(i) Please supply a copy of the supposed proposal from Tandridge to the neighbour suggesting a joint meeting to be hosted by the council.

(ii) Please supply a copy of the supposed refusal of the neighbour to attend the supposed proposed joint meeting, supposedly to be hosted by the district council.

(5) The rear of the crossover was shown on submitted plans in 2001 and 2004 at just under 7m across, and the district council has stated these measurements were accurate.

During the first half of 2006, however, it was found to be 7.8m when measured by an independent highways expert.

(i) Please confirm whether the district council sanctioned the knock-back of the left-hand boundary wall, increasing the rear of the crossover to 7.8m. (Information supplied under FoI shows council officers were aware of the widening).

(ii) Please confirm whether the county council sanctioned the knock-back of the left-hand boundary wall. If yes to either of the above, please confirm the dates.

(6) The submitted plans for changes of use at 7 High Street that were put into the public arena did not show the front of the crossover.

However, plans dated around 2002, but not released until 2010, do

show the front of the crossover.

On the plans submitted by [named individual] on behalf of DB Enterprises, the front of the crossover scales up to around 6m when it actually measured just over 3m. The side pavement running alongside the Co-op supermarket is not indicated on the plans.

It is a cause for concern that this part of the submitted plans was truncated on the council website.

(i) Despite the focused attention on parking (which included specific references to the crossover from the highways authority), did none of the officers or councillors involved in approving parking at 7 High Street notice the extreme discrepancy between the crossover shown on the plans and the actual crossover?

(ii) Why were the plans showing the misrepresented crossover not put into the public arena?

(iii) The highways officer who handled the applications stated he was only responsible for the turning area requirement and that he could not be held responsible for approving the parking spaces. Which department of which council was responsible for negotiating the approval of parking spaces on the forecourt?

## Legal Annex

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### 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.