

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

Date: 6 June 2013

Public Authority: East Riding of Yorkshire Council
Address: County Hall
Cross Street
Beverley
East Riding of Yorkshire
HU17 9BA

Decision (including any steps ordered)

1. The complainant requested information from East Riding of Yorkshire Council ("the council") relating to a particular planning application. The council refused to comply on the basis that the requests were manifestly unreasonable and regulation 12(4)(b) of the Environmental Information Regulations 2004 ("the EIR") therefore applied.
2. The Commissioner's decision is that the council responded correctly. The requests were manifestly unreasonable and the public interest did not favour disclosure.
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 14 November 2012, the complainant requested information from the council in the following terms:

"The council has conducted there [sic] own investigation into planning application 3170473

Could you supply me with answers to the following questions within twenty-one working days.

- 1) *Was all the information presented to the council in planning application 317-473 correct.*
 - 2) *Was the use of any part of the proposed site restricted under any planning development applications”.*
5. On 22 November 2012, the council replied. It said that it would not respond to the requests on the basis that they were manifestly unreasonable. It cited the exception under regulation 12(4)(b) of the EIR.
 6. The complainant requested an internal review on 4 December 2012.
 7. The council completed an internal review on 21 December 2012. It said that it wished to maintain its refusal.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He asked the Commissioner to consider whether the council correctly refused the requests.

Reasons for decision

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

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

*“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”.*
10. The Commissioner considers that if a request would be vexatious under section 14(1) of the Freedom of Information Act 2000 (“the FOIA”), it would also be manifestly unreasonable under the EIR.
11. The Commissioner has recently published new guidance on vexatious requests and for ease of reference, this can be accessed here:

http://www.ico.org.uk/news/blog/2013/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

12. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is manifestly unreasonable rather than the individual submitting it. Sometimes, it will be patently obvious that the requests are manifestly unreasonable. In cases where it is not so clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. This will usually be a matter of objectively judging the evidence of the impact on the authority and weighing this against any evidence about the purpose and value of the request. Public authorities may also take into account the context and history of the request where relevant.
13. When a request is refused as vexatious or manifestly unreasonable, there is often a long and difficult background to the requests, usually arising from some sense of grievance that for whatever reason has not been resolved to the satisfaction of the complainant. That is clearly the case here.
14. It was apparent from the council's responses to these requests that the context and history of the matter was particularly important. The council highlighted that the matter has already been investigated by the Commissioner who supported the council's use of regulation 12(4)(b) with respect to some earlier requests. For ease of reference, the Commissioner's formal decision notice from September 2011 can be accessed here:

http://www.ico.org.uk/~media/documents/decisionnotices/2011/fs_50378227.ashx
15. The Commissioner agrees that this background is very important. He does not consider that that it is necessary to reiterate the background or findings of his previous investigation here in detail. This notice should be read in conjunction with the previous notice.
16. To give a brief account of the history, the complainant has been in dispute with the council over the actions it took relating to planning matters with respect to his neighbour's property. Since 1991, numerous council officers had been in contact with the complainant and he has been provided with access to the planning files concerned. The issues concerned were however never resolved to the satisfaction of the complainant who continues to try to engage the council in debate about the matter despite its clear assertions that it cannot offer any further assistance and its advice that the matter is a civil issue on which the complainant should seek his own legal advice. Despite this, the Commissioner understands that the complainant has never sought a determination by the court.

17. As already mentioned, the Commissioner's concern is to establish whether the requests were manifestly unreasonable in any given case. It is possible that despite previous manifestly unreasonable requests, the same individual could make a new request that is not manifestly unreasonable and which may be distinguished from the pattern of previous vexatious behaviour. Genuine consideration of the requests made should always take place on a case by case basis, however, given the history and context in the present case, the Commissioner considered that it was very unlikely to be the case that the requests could not fairly be seen as a continuation of the same campaign that had already been found to be manifestly unreasonable. Nonetheless, with this in mind, the Commissioner wrote to the complainant and said that, on the face of it, the present requests appeared to be a continuation of the same campaign and unless he could make a persuasive case for them being treated differently, the outcome would be likely to be a further decision notice referring to the previous findings.
18. In response, the complainant telephoned the Commissioner and made it clear that he did not accept the previous findings. The Commissioner pointed out that the appropriate course of action to have taken in that scenario would have been to make a complaint to the First-Tier Tribunal (Information Rights). The complainant expressed reluctance to pursue this route and said that although the outcome would be likely to be the same, he required a further decision notice from the Commissioner. The complainant did not make out any convincing case for why the Commissioner should distinguish these requests from the previous behaviour. He said that the council's records proved that mistakes had been made and it is up to the Commissioner to ensure that these mistakes are corrected. He added that his questions were simple requiring a yes or no answer and the solution to the problems over many years was also a simple one.
19. The Commissioner would like to clarify that the nature of his role is not, as the complainant appears to believe, to correct records or alleged mistakes made by the council. The Commissioner's jurisdiction is limited to considering access to information and whether the requests made in this case were manifestly unreasonable. Furthermore, the fact that the dispute has been on-going for so long, along with the history set out in the Commissioner's previous notice, demonstrates that the complainant's views on how easily the matter could be resolved are not well-founded. It is apparent to the Commissioner that even if it would be relatively simple to respond to these particular requests, responding would not resolve the issues concerned and would be unlikely to end the complainant's campaign against the council.

20. In short, the Commissioner considers that there is a very strong case and body of evidence to support the council's refusal of these requests. The burden very much rests with the complainant to show that his requests were not manifestly unreasonable in the present case, which he has not done. The Commissioner therefore has no hesitation in finding that there was no serious purpose or value that would warrant allowing the complainant to continue to pursue the council in this disproportionate manner through the use of the legislation.

Public interest test

21. Unlike section 14(1) of the FOIA, there is a public interest associated with this exception. In practice however it makes no difference to the outcome since any legitimate interest in complying with the requests is taken into account in the overall assessment of whether a request is manifestly unreasonable. However, the Commissioner would like to take the opportunity to make the general point that the FOIA and the EIR give members of the public unprecedented rights to access recorded information held by public authorities. It is important that those rights are exercised responsibly. It was not the Commissioner's view that the complainant has exercised his rights responsibly on this occasion. If there is any remedy to these problems, it clearly lies elsewhere. The public interest in protecting public resources and the reputation of the legislation far outweighs the public interest in responding to these requests.

Other matters

22. The Commissioner must make a decision under section 50 of the FOIA unless it appears to him that the application for a decision is in itself frivolous or vexatious. Although the Commissioner has issued a further decision notice on this occasion, despite the lack of obvious merit to the application, the Commissioner would like to highlight to the complainant that should he submit any similar complaints to the Commissioner, the Commissioner may consider exercising his discretion not to consider the application in accordance with section 50(2)(c).

Right of appeal

23. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

24. 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.
25. 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
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