

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 9 July 2014

**Public Authority:** Sunderland City Council

**Address:** Civic Centre  
P.O. Box 100  
Burdon Road  
Sunderland  
SR2 7DN

#### Decision (including any steps ordered)

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1. The complainant has requested information about the sale of Marine Walk, Sunderland from Sunderland City Council ("the Council"). The Council has refused the request in reliance of section 14 of the FOIA on the grounds that it is vexatious.
2. The Commissioner's decision is that the Council is entitled to rely on section 14 Of the FOIA. He has decided that the complainant's request can properly be characterised as being part of a concerted campaign.
3. The campaign identified by the Commissioner has resulted in a number of requests for information, culminating in the complainant's request, which have placed a significant burden on the Council.
4. The Commissioner does not require the Council to take any further action in this matter.

## Request and response

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5. On 31 October 2013, the complainant wrote to Sunderland City Council ("the Council") via the 'WhatDoTheyKnow' website and requested information in the following terms:

"Please inform me, has land on the west side of Marine Walk been sold / leased / or rented to Fitz Architects or BBL Limited.

If land on the west side of Marine Walk has been sold / leased / or rented to Fitz Architects or BBL Limited please inform me where the land was advertised for sale / lease / or rent.

If land on the west side of Marine Walk has been sold / leased / or rented to Fitz Architects or BBL Limited please inform me the terms of the sale, amount paid / details of the lease or rental agreement.

If land on the west side of Marine Walk has not been sold / leased / or rented to Fitz Architects or BBL Limited please inform me how Fitz Architects BBL Limited have received planning approval to build on council owned land."

*[https://www.whatdotheyknow.com/request/council\\_land\\_west\\_side\\_of\\_marine#incoming-454303](https://www.whatdotheyknow.com/request/council_land_west_side_of_marine#incoming-454303)*

6. The Council replied to the complainant on 20 November 2013, advising him that his request for information had been refused in reliance of Regulation 12(4)(b) of the Environmental Information Regulations and, to the extent it may concern information that is not environmental information, under section 14(1) of the Freedom of Information Act.'

7. The Council provided its rationale for the application of Regulation 12(4)(b) and section 14(1), by way of a reference to its response to a different requestor under a 'WhatDoTheyKnow' reference:

*[https://www.whatdotheyknow.com/request/marine\\_walk\\_master\\_plan\\_2#incoming-431501](https://www.whatdotheyknow.com/request/marine_walk_master_plan_2#incoming-431501)*

8. On 21 November 2013 the complainant asked the Council whether it wanted to explain why it considered his request as being vexatious.
9. The Council responded on 27 November 2013 by informing the complainant that it had nothing to add to the response it had made to the other requestor.

## Scope of the case

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10. The complainant contacted the Commissioner on 22 November 2013 to complain about the way his request for information had been handled.
11. The Commissioner has investigated whether the Council is entitled to rely on regulation 12(4)(b) of the EIR to withhold environmental information, and on section 14 of the FOIA to withhold non-environmental information.

## Reasons for decision

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### Is the requested information 'environmental information'?

12. In responding to the complainant's request the Council advised the complainant that his request was considered under the Freedom of Information Act 2000 and the Environmental Regulations 2004.
13. Regulation 2(1) of the EIR defines what constitutes 'environmental information'. Subsections (a) to (c) state –
  - '(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 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.'*
14. The Commissioner considers that the phrase 'any information...on' should be interpreted widely in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact.
15. In this case The Commissioner has determined that the information sought by the complainant does not constitute environmental information. He considers that information sought by the complainant relates to a commercial transaction rather than to the environmental

factors set out in Article 2(1)(c) of the Council Directive 2003/4/EC(d), which defines environmental information for the purpose of the EIR.

16. In consequence of the above the information sought by the complainant falls to be considered solely in relation to the Council's application of section 14 of the FOIA.

#### **Section 14 – Vexatious requests**

17. Section 14(1) of FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
18. The term 'vexatious' is not defined in the legislation. In *Information Commissioner v 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.
19. 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.
20. 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 dealings, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).
21. The Commissioner has therefore considered 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. He considers there is in effect a balancing exercise to be undertaken,

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

weighing the evidence of the request's impact on the authority against its purpose and value.

22. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests<sup>2</sup>. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
23. It is the Council's position that the planning process allows any member of the public to make representations and to raise objections about a proposed development. The Council therefore believes that the complainant's use of the FOIA to raise issues in opposition to the development amounts to an abuse of the planning process.
24. The Commissioner rejects this position. The Commissioner considers that the use of the FOIA is legitimate in circumstances where a person wants to examine recorded information which is not proactively put into the public domain by a public authority as part of the normal planning process.
25. Nevertheless, it is clear that the Council has received significant correspondence about the Marine Walk development, including that from the complainant. The focus of this correspondence has changed over time, but has included the Seafront Strategy and Marine Walk Masterplan; the planning application process; Health and safety, Building Regulations and ground gas monitoring arrangements; the Architect's compliance with various requirements; access to the development; discrimination against people with disabilities and the sale of land.
26. The Council points out that the primary documents relating to the matters listed above have all been published by the Council and further information has been made available to the public through the Council's responses to various requests for information under the FOIA and in response to the Ombudsman, concerning planning matters, and to the European Convention on Human Rights regarding disability access issues.

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<sup>2</sup> [http://www.ico.org.uk/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/dealing-with-vexatious-requests.ashx](http://www.ico.org.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx)

27. The Council considers that the volume and pattern of requests relating the Marine Walk development points to a concerted campaign mounted by a number of individuals. It appears to the Council that a number of persons, including the complainant, are making information requests through the 'WhatDoTheyKnow' website. These individuals are either known to one another in person or as members of a 'virtual group'.
28. In evidence of this the Council has drawn the Commissioner's attention to a number of information requests submitted via the 'WhatDoTheyKnow' website. These requests are listed in appendix 1 of this notice.
29. The Council also point out that it is the same set of individuals, who are making the 'WhatDoTheyKnow' requests, that review and comment on those requests. These persons appear to have adopted the same line of questioning and reasoning.
30. To evidence of this, the Council has drawn the Commissioner's attention to two other requests it has received, again concerning the Marine Walk Development. This Commissioner has reviewed this evidence and has found it to be sufficiently compelling for him to believe that a number of individuals are acting in the manner of a campaign. He therefore considers that the complainant's request should be considered in the context of that campaign.
31. The Commissioner has decided that the volume and pattern of the requests made by these persons is such that they are placing a significant burden on the Council, to the extent that the complainant's request has crossed the line of becoming vexatious. Indeed the Commissioner is obliged to accept the Council characterisation of this burden as placing 'onerous demands on a small group of staff working in the subject area'.
32. It is clear to the Commissioner that the volume of requests received by the Council is such that its ability to properly deal with other matters raised by the public is significantly impeded. The Commissioner notes the Council's assertion that it has received 42 pieces of correspondence solely from the complainant.
33. An examination of the requests received by the Council in connection with Marine Walk lead the Commissioner to conclude that this group of people will not let matters lie and that they are pursuing the Council to an unreasonable level. In the Commissioner's opinion the Council has now reached the point where it is appropriate for it to say enough is enough and for it to apply section 14 of the FOIA to the complainant's request.

34. The Commissioner is mindful of the judgment of the Upper Tribunal in *Wise v The Information Commissioner (GIA/1871/2011)* which stated that;

*"...there must be an appropriate balance between such matters as the information sought, the purpose of the request and the time and other resources that would be needed to provide it."*

35. The Commissioner must have regard to the resources available to public authorities for dealing with requests for information. In this case, the complainant's request is part of a long line of interrelated requests which have placed a significant burden on the Council in terms of officer time and resources. He has therefore decided, solely on the issue of proportionality and burden that the Council is entitled to rely on section 14 of the FOIA to refuse the complainant's request.
36. The Commissioner notes that information about the Council's conveyance of the development site on Marine Walk is available through the Land Registry.

## Right of appeal

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37. 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: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

38. 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.
39. 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**



## Appendix 1

Requests received by Sunderland City Council relating to the Marine Walk Development

1. [https://www.whatdotheyknow.com/request/land\\_title\\_number\\_ty\\_46688\\_2#incoming-492767](https://www.whatdotheyknow.com/request/land_title_number_ty_46688_2#incoming-492767)
2. [https://www.whatdotheyknow.com/request/council\\_land\\_west\\_side\\_of\\_marine#incoming-454303](https://www.whatdotheyknow.com/request/council_land_west_side_of_marine#incoming-454303)
3. [https://www.whatdotheyknow.com/request/planning\\_applications\\_16#outgoing-302324](https://www.whatdotheyknow.com/request/planning_applications_16#outgoing-302324)
4. [https://www.whatdotheyknow.com/request/marine\\_walk\\_master\\_plan\\_2#outgoing-315277](https://www.whatdotheyknow.com/request/marine_walk_master_plan_2#outgoing-315277)
5. [https://www.whatdotheyknow.com/request/traffic\\_public\\_safety#incoming-436064](https://www.whatdotheyknow.com/request/traffic_public_safety#incoming-436064)
6. [https://www.whatdotheyknow.com/request/fitz\\_architects\\_proposed\\_develop#incoming-438916](https://www.whatdotheyknow.com/request/fitz_architects_proposed_develop#incoming-438916)
7. [https://www.whatdotheyknow.com/request/fitz\\_architects\\_marine\\_walk#incoming-433244](https://www.whatdotheyknow.com/request/fitz_architects_marine_walk#incoming-433244)
8. [https://www.whatdotheyknow.com/request/fitz\\_architect#incoming-466646](https://www.whatdotheyknow.com/request/fitz_architect#incoming-466646)
9. [https://www.whatdotheyknow.com/request/marine\\_walk\\_master\\_plan#incoming-438923](https://www.whatdotheyknow.com/request/marine_walk_master_plan#incoming-438923)
10. [https://www.whatdotheyknow.com/request/fitz\\_architects\\_ruin\\_award\\_winni#incoming-438947](https://www.whatdotheyknow.com/request/fitz_architects_ruin_award_winni#incoming-438947)
11. [https://www.whatdotheyknow.com/request/fitz\\_architects\\_ruin\\_award\\_winni\\_2](https://www.whatdotheyknow.com/request/fitz_architects_ruin_award_winni_2)
12. [https://www.whatdotheyknow.com/request/fitz\\_architect\\_2#incoming-411807](https://www.whatdotheyknow.com/request/fitz_architect_2#incoming-411807)
13. [https://www.whatdotheyknow.com/request/sale\\_of\\_land\\_2#incoming-493283](https://www.whatdotheyknow.com/request/sale_of_land_2#incoming-493283)
14. [https://www.whatdotheyknow.com/request/land\\_title\\_number\\_t\\_y46688\\_3#comment-47992](https://www.whatdotheyknow.com/request/land_title_number_t_y46688_3#comment-47992)

15. [https://www.whatdotheyknow.com/request/nepotism\\_2#incoming-487286](https://www.whatdotheyknow.com/request/nepotism_2#incoming-487286)
16. [https://www.whatdotheyknow.com/request/fitz\\_architects#comment-47622](https://www.whatdotheyknow.com/request/fitz_architects#comment-47622)
17. [https://www.whatdotheyknow.com/request/land\\_title\\_number\\_t\\_y46688#comment-47448](https://www.whatdotheyknow.com/request/land_title_number_t_y46688#comment-47448)