

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 3 August 2016

Public Authority: East Sussex County Council

Address: County Hall
St Anne's Crescent
Lewes
East Sussex
BN7 1UE

Decision (including any steps ordered)

1. The complainant has requested information from East Sussex County Council which concerns a property which he owns. The complainant's request was refused by the Council in reliance on Regulation 12(4)(b), on the grounds that to do so would be manifestly unreasonable.
2. The Commissioner has considered the Council's application of Regulation 12(4)(b) in the light of its previous application of this same exception in respect to a prior request made by the complainant for related information. The Commissioner has decided that East Sussex County Council is entitled to rely on Regulation 12(4)(b).
3. The Council is not required to take any further steps in this matter.

Request and response

4. On 23 July 2014, the complainant wrote to East Sussex Council and requested information in the following terms:

"Supplementary citations to my EIR Request ref: 4032

A. Third party information indicates there were telephone and written communications between ESCC and Savills in April 2014 that were not disclosed in any of ESCC responses to my EIR request ref. 4032. Please disclose all telecon notes, memoranda, messages, emails, documents between ESCC and Savills during the period 1st to 25th April 2014.

- B. Third party information indicates in 1982 there were written communications between ESCC acquisition of [a named property], the size of frontage of [a named property], ESCC re-development of [a named property] site for housing (10 plots per acre – in 1.9 acres site), also restrictive covenants. Please disclose all telecon notes, memoranda, messages, emails, documents between ESCC, Heynes and HBC, during 1982.
- C. Please disclose all notes, memoranda, documents involving [a named person] and/or [a named person] to authorise and to seek on 1 April 2011 the vacant possession of [a named property].
- D. On what date did ESCC draft or initiate a proposed new restrictive covenant (additional to 24/03/1892 restrictive covenants) not to build additional dwellings at [a named property]? [Our own recollection is new covenant was proposed at our September 2011 meeting at County Hall with [a named person] and [a second named person] at ESCC's first proposing offer of right to buy."
5. The Council responded to the complainant's request on 11 August 2014, under reference EIR 4267. The Council advised the complainant that Regulation 12(4)(b) applies to his request on the grounds that it is manifestly unreasonable/vexatious.
6. On 2 September 2014 the complainant wrote to the Council and asked it to undertake an internal review.
7. On 23 January 2015 the Council provided the complainant with further documents and clarification in respect to his request referenced 4267. The Council advised the complainant that some of the information was withheld in reliance on Section 42 of the FOIA.
8. The Council wrote to the complainant again on 2 April 2015, responding to parts A and B of his request 4267 and to a further request made by the complainant which the Council referenced as 5312.
9. The complainant's request – referenced 5312 is contained in an email dated 27 February 2016. In this email the complainant asked supplementary questions in respect of his earlier request under reference 4267. The terms of the complainant's 'supplementary questions' are:
- "B2 State legal exemption/s relied on by ESCC in defaults of repairs/replacements of Western boundary-fence required by covenant.

C2 State legal exemption/s relied on by ESCC in defaults of repairs/maintenance of original outbuildings required by covenant.

D2 What steps (discussed at Councillor Scott's meeting 7 Oct. 2014) have been taken by ESCC?

*to withdraw new restrictive covenant duplicating original 1892 non-development covenant?

*to withdraw new restrictive covenant against dividing the dwelling, (previous owner divided in 1977, repaired in 1990)?

*to amend to 5 years new restrictive covenant prohibiting sale for 10 years, (Housing Act download stipulates 5 years)?"

10. The Council advised the complainant that:

"a final enquiry has been undertaken to establish whether the archived files [a named person] referred to in his email of 24 January 2011 (such email having been provided to you in response to part C of request 4267) as having retrieved from Newhaven and covering the period from ESCC's acquisition in 1982 still exist and whether they were considered in responding to Parts A and B and also in responding to your request of June 2013, which was for an Estates' letter dated 23 May 1984...

I can confirm that case files from 9 February 1994 and from 18 June 1997 regarding [a named property] have been located but the archived files [a named person] referred to in his email of 24 January 2011 are no longer stored."

11. In respect of the questions asked by the complainant under request 5312, the Council advised him that it is refusing to provide answers/information in reliance on Regulation 12(4)(b) of the EIR, on the grounds that his request is manifestly unreasonable.

Scope of the case

12. The complainant initially contacted the Commissioner 20 March 2015 to complain about the way East Sussex County Council handled his request referenced 4267.

13. Having reviewed the documents submitted by the complainant, the Commissioner determined that she should investigate whether the Council is entitled to rely on Regulation 12(4)(b) of the EIR in respect of his request referenced 5312. Request 5312 relates to a number of requests which the complainant previously submitted to the Council and

it is subject to the same application of Regulation 12(4)(b) as the complainant's request referenced 4267.

Reasons for decision

Background to the request

14. The Council has provided the Commissioner with information in order to put the complainant's request into its proper context. It has advised the Commissioner that, in line with all of the complainant's previous requests made to the Council, requests 4267 and 5312 relate to a boundary dispute.
15. The disputed boundary relates to a property which is owned by the complainant. The dispute began when the complainant was a tenant of the property and continued after he bought the property from the Council, having exercised his right to buy.
16. In July 2013, a meeting took place between the Council and the neighbouring land owner to try and resolve the boundary issue. The Council commissioned a survey to resolve the dispute but the complainant did not agree with the outcome of that survey in terms of its determination of where the boundary lay.
17. Having been unable to agree this the dispute following the survey, the Council offered to finally settle the matter by determining the difference in value between the land the Council sold to the complainant and the land that he considered he should have ownership of, and to refund him any difference in value.
18. The Council has advised the Commissioner that there is no further action it can take to resolve this matter: The land which the complainant considers to be his land is not owned by the Council.

Regulation 12(4)(b) – where a request is manifestly unreasonable

19. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose environmental information to the extent that the request for information is manifestly unreasonable.
20. There is no definition of 'manifestly unreasonable' under the EIR. The Commissioner considers that 'manifestly' implies that the request should 'obviously' or 'clearly' be unreasonable.
21. A request can be manifestly unreasonable for two reasons: Firstly where it is vexatious and secondly where the public authority would incur

unreasonable costs or where there would be an unreasonable diversion of resources.

22. There is no definition of the term "vexatious" in the Freedom of Information Act, however the issue of vexatious requests has been considered by the Upper Tribunal in the case of *The Information Commissioner and Devon County Council v Mr Alan Dransfield (GIA/3037/2011)*. In the Dransfield case the Tribunal concluded that the term could be defined as "manifestly unjustified, inappropriate or improper use of formal procedure." The Tribunal identified four factors likely to be relevant in vexatious requests:
 - The burden imposed by the request on the public authority and its staff
 - The motive of the requestor
 - Harassment or distress caused to staff
 - The value or serious purpose of the request.
23. The Upper Tribunal's decision established the concepts of "proportionality" and "justification" as being central to any consideration of whether a request for information is vexatious.
24. The key to determining whether a request is vexatious is a consideration of whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear it is necessary to weigh the impact of the request on the public authority against the purpose and value of the request. To do this a public authority must be permitted to take into account wider factors associated with the request, such as its background and history.
25. To support its position the Council provided the Commissioner with background information (above) and copies of previous correspondence which has passed between the Council and the complainant in respect of his previous requests.
26. Additionally, the Council has confirmed to the Commissioner that it has disclosed to the complainant all of the information it holds that is relevant to part A of his request and that no information has been withheld in respect of his request under reference 4267.
27. In order to satisfy itself of this, the Council has advised the Commissioner that it has searched all paper and electronic files held by the Council's Estates Department.

28. Searches have including the Council's archived material and its employees in the Estates Department, who may have held this information in their individual email systems, have searched through all emails relating to the period specified in part A of request 4267. Additionally, paper-based files held by four solicitors in the Council's Legal Department, including all archived material, have been searched and email systems have also been checked.
29. The Council has also confirmed that no other departments were involved in respect of the information requested by the complainant.
30. The Council has provided the Commissioner with a copy of the complainant's request of 27 February 2015 which the Council referenced 5312, together with other correspondence which has passed between the Council and the complainant.
31. Request 5312 has flowed from previous requests made by the complainant; principally from requests 4032 and 4267.
32. In request 4032, the complainant requested copies of communications which had passed between the Council and Savills. In request 4267 – referred to by the complainant as 'Supplementary citations to my EIR Request ref: 4032', the complainant asked for disclosure of 'all telecon notes, memoranda, emails, documents between ESCC and Savills during the period 1 – 25 April 2014'.
33. The Council provided the Commissioner with documents, which it has assured her, have been disclosed to the complainant in response to his requests 4032 and 4267. The Council advised the Commissioner that, on April 2 2015, a further enquiry had been undertaken and in respect of part A of his request, and no further documents were found to be held.
34. In respect of its application of Regulation 12(4)(b) to the complainant's request under reference 5312, the Council has referred the Commissioner to its letter to the complainant of 11 August 2014. This letter sets out the Council's considerations of why request 4267 was considered to be manifestly unreasonable: the Council has advised the Commissioner that it relies on these same considerations.
35. Having read the Council's letter, it is clear to the Commissioner that the complainant and Council have engaged in detailed correspondence about the specific boundary dispute since April 2013. Since that time, the complainant has submitted a significant number of detailed requests for information which concerns the property he now owns. Each of the complainant's requests have invariably resulted in his submission of further similar and complex requests, involving information dating back to the early 1980s.

36. All of the complainant's requests have related to his tenancy and subsequent purchase of his property, and to the position of a disputed boundary. It is the Council's position that his requests can properly be considered as being obsessive.
37. The Council directs the Commissioner to the volume and frequency of the complainant's email correspondence, pointing out that from March 2012, four of its officers received 1085 emails from the complainant, of which, 878 were received by a single officer.
38. In addition to submitting requests for information, the complainant has endeavoured to clarify and argue points and to challenge decisions: Often the complainant's correspondence appears hostile to the Council and contains complaints about members of its staff.
39. The Council asserts that request 5312 is the complainant's attempt to reopen an issue which has already been comprehensively addressed and is part of a succession of requests relating to his boundary dispute. This request is the latest in a chain of requests which have been frequent and overlapping.
40. In the circumstances of its previous dealings with the complainant, the Council argues that request 5312 does nothing to obviously serve or further the requester's stated aims. It argues that request 5312 is of little or no wider benefit to the public, being simply an avenue for the complainant to continue his challenge of the Council for alleged wrongdoing.
41. The Council points out that there is no cogent basis for the complainant's challenges. It asserts that he is unlikely to be satisfied with any response the Council might make to any of the requests he cares to submit and that it is evident that the complainant is pursuing a highly personalised matter of little if any benefit to the wider public.

The Commissioner's conclusions

42. The Commissioner agrees with the Council that request 5312, viewed in the context of the complainant's previous requests, has passed the point where a reasonable person would conclude it is manifestly unreasonable.
43. The Commissioner has considered the Council's representations in respect of its application of Regulation 12(4)(b) to his request under reference 4267, and also the documents which the Council has provided in support of its position. She has noted the persistent nature of the complainant's correspondence and its primary focus being the complainant's own property.

44. It is apparent to the Commissioner that the complainant is trying to sustain a dialogue with the Council in a matter which has not been concluded to his satisfaction or to discover evidence which he can use to further his aims.
45. In the Commissioner's opinion, it would be unreasonably burdensome and an unwarranted use of the Council's resources to comply with this request. The Commissioner is therefore satisfied that Regulation 12(4)(b) is engaged in respect of the request 5312.

The public interest test

46. Having determined that Regulation 12(4)(b) is engaged, the Commissioner has gone on to consider whether the balance of the public interest in maintaining the exception outweighs the public interest in responding to request 5312.
47. The Commissioner will always give weight to factors which favour the disclosure of information which would increase the public's understanding of the actions taken by the Council and of the processes by which it makes its decisions. Such disclosure of information increases transparency and provides accountability of public authorities.
48. In this case, it is important to note that request 5312 is focused solely on the complainant's own property. This significantly reduces the wider public interest in information that would flow from request 5312.
49. The Commissioner has difficulty in discerning how complying with request 5312 would further the public's greater awareness of environmental matters, the exchange of views or provide greater public participation in environmental decision making.
50. It is clear to the Commissioner that the information sought by the complainant is essentially of a personal nature: Any information which the Council could disclose into the public domain as a result of request 5312 would likely be of limited interest and impact on the wider community.
51. In the Commissioner's opinion, it is not in the public interest to continue to use public resources to satisfy a complainant who shows no sign of being satisfied by the Council's responses to his requests, particularly where the complainant apparently wants to pursue a dispute which the Council cannot resolve.
52. Having considered the limited public interest in the requested information against the burden, disruption and unwarranted use of Council resources which the request would necessitate, the Commissioner finds that the public interest lies in favour of the Council's

position. The Commissioner has therefore decided that the Council is entitled to rely on Regulation 12(4)(b) in respect of request 5312.

Right of appeal

53. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

54. 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.
55. 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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