

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

Date: 8 March 2018

Public Authority: Medway Council
Address: Gun Wharf
Dock Road
Chatham
ME4 4TR

Decision (including any steps ordered)

1. The complainant has requested information about a proposed traffic regulation order.
2. The Commissioner's decision is that Medway Council has correctly applied regulation 12(4)(b) of the EIR for manifestly unreasonable requests.
3. The Commissioner does not require Medway Council to take any steps.

Request and response

4. On 9 February 2017 the complainant wrote to Medway Council ('the Council') and requested information in the following terms:

"The Medway Council (Rainham South)(Parking Places and Waiting Loading and Stopping Restrictions)[Redacted]"

Concerning the above proposed traffic regulation order for which a notice of proposal appeared in the Medway Messenger newspaper on January 20th 2017.

Requests

1. *Starting from July 1st 2015, please supply details of face to face contacts and meetings/discussions with residents and/or councillors and/or anyone else about this proposed order.*
2. *Starting with the date July 1st 2015, please supply copies of all correspondence, whether by email or by other means, sent to or from Medway Council about this proposal. This includes correspondence going to or from councillors.*
3. *Starting with the date of 1st July 2015, please supply copies of all internal correspondence or other documentation (computerised or in any other form) at Medway Council including emails, records of discussions or meetings with any person(s). This includes all contact of any sort with councillors.*
4. *Starting with July 1st 2015, please supply:*
 - a. *dates of all visits to the site of the proposed traffic order.*
 - b. *copies of the notes and/or records of such visits.*
5. *What is the reason(s) for this request and why are you proposing it. Please supply documents to prove why you are proposing it and how you have complied with the law in doing so.*

Please supply the requested information in writing and by post."

5. The Council responded on 9 March 2017 and refused to provide the requested information citing section 14(1) of the FOIA for vexatious requests.
6. Following correspondence with the Information Commissioner the Council carried out an internal review. It wrote to the complainant on 13 October 2017 and continued to refuse the requested information but revised its position to cite regulation 12(4)(b) of the EIR (for manifestly unreasonable requests) as the reason for doing so.

Scope of the case

7. The complainant contacted the Commissioner following his receipt of the internal review response dated 26 October 2017. He complained about the way his request for information had been handled, specifically refuting that the request is vexatious.

8. The Commissioner considers the scope of the case to be whether the Council is correct in its reliance upon regulation 12(4)(b) of the EIR as the basis for refusing the request.

History

9. The Council provided details of 17 information requests made by the complainant since 2013, a number of which are regarding the proposed traffic regulation order ('TRO'). The Commissioner has received five complaints that are relevant to this case, listed here by way of background.
10. FS50571880 relates to an information request raised on 19 January 2015 regarding a consultation letter to residents from the Council on the proposed TRO. The complainant asked for details of the origins of the request that resulted in the proposed TRO, how the Council had formed its view for the proposal, including notes, technical documents and site visit records, and details about the communication of the consultation letter to the public. The decision notice concluded that the Council had provided all the information it held.
11. FS50577302 is regarding an information request raised on 25 February 2015. In it the complainant requests copies of replies to the informal consultation letter and records of any meetings, correspondence with residents or internal to the council, and records of all site visits regarding the proposal. Some of the request was repeated in a later decision notice (FER0582993), so this decision notice only considered the last part of the request relating to site visits. The Council advised that although visits were held, no information was recorded. The Commissioner found that on the balance of probabilities no information was held.
12. FER0582993 relates to an information request raised on 14 April 2015. The complainant requested full copies of all replies to the informal consultation letter, the details of Council officers who formed the professional view for the proposal including names, addresses, qualifications, posts held including with other employers, experience, and whether they were connected in any way with the school around which the TRO is based. It also raised questions regarding individuals' whose views or statements were presented by the Council in the letter. The Council provided some information, including a summary of the consultation response comments. The Commissioner concurred that some information about Council officers constituted third party personal data – regulation 13(1), and was withheld correctly. However

she found that the Council should provide an accurately reproduced, but anonymised, list of the full consultation response comments.

13. FER0596640 relates to an information request raised on 6 July 2015 requesting copies of written responses to the statutory consultation process, which the Council provided in redacted form. The complainant also requested details of any other correspondence, meetings, documentation regarding the TRO with residents, or between councillors, records of visits to site and reasons for the proposal including details of the person(s) whose comments resulted in the proposed TRO. The Commissioner found that information was withheld correctly under the EIR provisions for personal data – regulation 13(1), and internal communications – regulation 12(4)(e).
14. The Commissioner has a further complaint which was not concluded at the time of reaching this decision, it is in response to a request made on 9 March 2017. The Council have contracted an external company ('the contractor') to continue the work on the TRO. The information requested is for full details of all the staff working for the contractor that are involved with the TRO including their names, work backgrounds, previous firms they have worked for, any family members they may have linked with the Council and details of the authority the Council had to employ them. The Council provided some information but withheld the rest stating it was either not held or would be personal data. A report regarding the consultation with the public was created by the contractor and correspondence between them and the Council was requested and provided. The complainant asked for details and records of site visits since February 2017 which the Council states are not held. The outstanding area of complaint, which is subject to investigation by the Commissioner, is regarding planning permission for a mobile unit on the school site which the complainant advises has elapsed and he states is linked to the requirement for the TRO.

Reasons for decision

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

15. Regulation 12(4)(b) 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;

16. The Commissioner recognises that, on occasion, there can be 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.
17. The Commissioner has published specific guidance on vexatious requests¹. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. Sometimes, it will be obvious when requests are vexatious, but sometimes it may not. In such cases, it should be considered whether the request would be likely to cause a disproportionate or unjustified level of disruption, irritation or distress to the public authority. This negative impact must then be considered against the purpose and public value of the request. A public authority can also consider the context of the request and the history of its relationship with the requester when this is relevant.
18. While section 14(1) of the FOIA effectively removes the duty to comply with a request, regulation 12(4)(b) of the EIR only provides an exception. As such the EIR explicitly requires a public authority to apply a public interest test (in accordance with regulation 12(1)(b)) before deciding whether to maintain the exception. The Commissioner accepts that public interest factors, such as proportionality and the value of the request, will have already been considered by a public authority in deciding whether to engage the exception, and that a public authority is likely to be able to carry through the relevant considerations into the public interest test. However, regulation 12(2) of the EIR specifically states that a public authority must apply a presumption in favour of disclosure. In effect, this means that the exception can only be maintained if the public interest in refusing the request outweighs the public interest in responding.
19. The Commissioner has referred to the submissions of both parties in order to understand the context of the request.

¹ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

The complainant's position

20. The complainant advises that his information requests to the Council are in relation to its serious actions affecting his home. He advises that he lodged a substantial objection to the TRO when it was published in 2015. After which he states that *"the matter lay dormant until January 20th this year [2017] when without notice to residents the proposal was revived."* He also states that *"the only local publicity was a few notices on lamp posts."*
21. The complainant wants to know how the proposal come about and claims that the primary school for which the proposal is designed to help is in breach of a planning control regarding a mobile unit on its site. He states that should the unit be removed then the land could be used for parking and negate the need for the TRO.
22. The complainant's states that the TRO is hugely detrimental to his home and therefore his information requests are *"entirely proper and reasonable."*

The Council's position

23. The Council advises that *"since 22 March 2013 [the complainant] has made 17 information requests, 8 of which he has made complaints to the ICO, 4 of which were relating to this matter."*
24. It considers that since 2013 the complainant's requests follow a similar pattern that culminate in an internal review, a complaint to the ICO and a request for information from the ICO for all the information that the Council has shared with them. The Council is involved in all stages causing an unreasonable strain on resources.
25. Furthermore the Council advises that *"[the complainant's] requests are often repetitive with minor changes i.e. date changes. He sends the next repetitive request when the previous request(s) are still at various stages of the above pattern."*
26. The Council has drawn the Commissioner's attention to this statement from the complainant *"what is the reason for this proposal and why are you proposing it? Please provide documents to prove why you are proposing it and that you have complied with the law in doing so"* and the wider context of his complaints and requests to the Council. It states that it can only surmise that the complainant believes *"there has been some form of maladministration by the council in the process that resulted in this proposal and the purpose of his request is to carry out his own investigation."*

27. The Council concludes therefore that the complainant will never be satisfied with its responses to his requests, and that the persistent nature of the requests is causing an *"undue burden on the council and the public purse and is having a detrimental impact upon officers who must handle these requests."*

The Commissioner's analysis

28. Firstly, the Commissioner would like to highlight that there are many different reasons why a request may be vexatious, as reflected in her guidance. There are no prescriptive rules, although there are generally typical characteristics and circumstances that assist in making a judgement about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed as vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates them. A commonly identified feature of vexatious requests is that they can emanate from some sense of grievance or alleged wrong-doing on the part of the authority.
29. The Commissioner's guidance has emphasised that proportionality is the key consideration for a public authority when deciding whether to refuse a request as vexatious. The public authority must essentially consider whether the value of a request outweighs the impact that the request would have on the public authority's resources in responding to it. Aspects that can be considered in relation to this include the purpose and value of the information requested, and the burden upon the public authority's resources.

The purpose and value of the requests

30. The Commissioner is sympathetic to the complainant's concern about the impact that the proposed TRO may have on his home. However, having reviewed the previous complaints, the Commissioner has also identified that although the complainant has changed the date criteria for the request, some of the Council's responses would remain the same or be very similar thereby diminishing the value of the request.
31. The Commissioner finds it likely that in light of the complainant's concerns about the impact of the proposed TRO on his home, his previous complaints on this matter, and the degree of tenaciousness and persistence in his requests, he is seeking to test its validity and the thoroughness of the Council.
32. Nonetheless, it is reasonable for the Commissioner to consider that there are more suitable means to raise a complaint or lodge an appeal

available to the requestor, such as the local government ombudsman or court. In situations where an individual disputes the decisions or actions of the public authority, the Commissioner recognises that the appropriate complaint or appeal process should be followed, and the purpose of the rights provided by the FOIA and EIR is not to supplant such processes, or else to be used to express dissatisfaction with the outcome of them.

33. Although the request for information may elicit a degree of new information into the public knowledge, it is not clear how this would formally resolve the concerns held by the complainant or serve the wider public. The Commissioner has therefore concluded that there is limited public value inherent within the request.

The burden on the Council

34. 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. 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.
35. To support its position the Council provided the Commissioner with background information and copies of previous correspondence which have passed between it and the complainant in relation to his requests regarding the TRO. For example seeking information linking Council officers with the school in a personal capacity, their professional qualifications and work experience and details of how officers have acquired local knowledge.
36. The Commissioner considers that it is clear from the complainant's correspondence with the Council and the nature of his requests that he questions the independence of those involved in the TRO and their professional competence. The Commissioner also observes that the complainant's pursuance of the justification for, or a legal basis of, the Council's proposal is integral to his requests on this matter rather than just seeking information.
37. As such the Commissioner appreciates that some degree of irritation or distress is inevitable to the officers involved in responding to the requests and complaints.
38. The Council believes it is likely that the complainant is using the FOI/EIR *"to carry out their own investigations into suspected*

maladministration, when there is due process in place for this type of investigation, it places undue burden on the authority.”

39. Taking account of the wider pattern of requests, complaints and correspondence, the continuing requests and their repetitive nature the Commissioner considers that significant public resources have been applied to responding to the complainant's requests on this matter.
40. The Commissioner has therefore concluded that answering this request would place a disproportionate burden upon the Council.

The public interest test

41. Regulation 12(1)(b) provides that:

...a public authority may refuse to disclose environmental information requested if –

(b) in all the circumstances of the case the public interest in maintaining the exception outweighs the public interest in disclosing the information.

42. The Commissioner acknowledges that the requests relate to the Council's proposed parking restrictions which are of concern to the complainant, and therefore are most likely to be of interest to the complainant's neighbours and local community.
43. The Commissioner also accepts that there will always be some public interest in favour of disclosure to promote the transparency and accountability of public authorities.
44. However, in considering the responses provided previously the Commissioner is not convinced that responding to this request will serve to resolve the complainant's underlying issues with the Council on this matter. Other courses of action are available to the complainant to pursue his objections to the TRO and his concerns about the Council's management of it.
45. The Commissioner therefore considers that the burden of responding to this request, and diverting council officers from other public duties, would be disproportionate compared to the benefit that the general public would receive.

Conclusion

46. Whilst the Commissioner recognises that the complainant remains concerned about proposed TRO and the Council's management of it,

she also considers that continued use of the FOIA / EIR to progress these concerns is a misuse of the legislation. It is understood that the complainant has the right to pursue the matter further using the Council's internal complaints process or the Local Government Ombudsman for independent review.

47. The Commissioner agrees with the Council that the complainant's requests have passed the point where a reasonable person would conclude they are vexatious and manifestly unreasonable.
48. The Commissioner therefore finds that the Council has properly applied regulation 12(4)(b) of the EIR to the complainant's requests. She considers that complying with the complainant's requests would be unreasonably burdensome and an unwarranted use of the Council's resources.

Right of appeal

49. 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

50. 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.
51. 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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