

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

Decision notice

Date: 8 March 2018

Public Authority: Kirby Muxloe Parish Council
Address: Parish Council Office
Station Road
Kirby Muxloe
Leicester
LE9 2EN

Decision (including any steps ordered)

1. The complainant has requested surveyors' reports with regards to a recreational ground. Kirby Muxloe Parish Council (the council) refused the request under both section 14(1) of the FOIA – vexatious request – and regulation 12(4)(b) of the EIR – manifestly unreasonable.
2. The Commissioner's decision is that the request is for environmental information and that regulation 12(4)(b) of the EIR is engaged. The Commissioner has found that the council has breached regulation 14(2) of the EIR as it issued its refusal notice outside the required timeframe.
3. As the refusal notice has now been issued, the Commissioner does not require the council to take any steps.

Request and response

4. On 25 November 2016 the complainant made the following request to the council:

"Further to my letter of 15th November it has been suggested to me that I may have misjudged whether or not your predecessors have obtained on behalf of the parish council some or all of the qualified surveyors reports required in relation to disposals or leases of charity properties.

Therefore, further to Freedom of Information Act 2000, kindly arrange to supply copies of all surveyors' reports obtained by the parish council in respect of leases or tenancies or proposed leases or tenancies of the recreation ground from the purported leases to the County Council of land adjoining the school in 2006 to the present time. I am sorry to put you to this trouble, but I need the information, and I hope the exercise will be informative in any event."

5. The complainant wrote the council further on the 23 December 2016 as he had received no response to his request and also complained to the Commissioner due to the non-response.
6. On 4 January 2017 the council wrote to the complainant apologising for the delay in responding, explaining that it was due to the amount of requests it has received, but gave no indication as to when a response would be received.
7. Following a further reminder sent by the complainant to the council on the 30 June 2017, the complainant contacted the Commissioner again on the 25 August 2017 to advise that he has still not received a response to his request.
8. Following contact from the Commissioner the council responded to the request on the 5 December 2017 refusing the request under section 14(1) of the FOIA and regulation 12(4)(b) of the EIR – manifestly unreasonable.
9. The complainant requested an internal review on the 13 December 2017 and the council provided its internal review response dated 10 January 2018 upholding its initial refusal.

Scope of the case

10. The complainant has told the Commissioner that he is not satisfied with the council refusing his request, and the time it took to respond.
11. The Commissioner considers the scope of the request is to determine whether the request falls under the EIR or FOIA and then whether the council can rely on either section 14(1) or regulation 12(4)(b) of the EIR to refuse the request.
12. The Commissioner will lastly determine whether the council has breached the time requirements for issuing a refusal notice.

Reasons for decision

Is the information environmental information?

13. The council quoted both section 14(1) of the FOIA and regulation 12(4)(b) of the EIR in its refusal of this request. Therefore the Commissioner needs to establish whether the request falls under the EIR or the FOIA; essentially whether the request is for environmental information or not.
14. Regulation 2 of the EIR states that environmental information is information 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;*
15. The Commissioner considers that the requested information falls within (c) above. Surveyors reports in relation to leases of a recreational ground would fall under administrative measures likely to affect the state of the elements of the environment outlined in (a) above.
16. Therefore the Commissioner finds that the EIR is the correct regime.

Regulation 12(4)(b) of the EIR – manifestly unreasonable requests

17. 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. There is no definition of 'manifestly unreasonable' under the EIR, but the Commissioner's opinion is that 'manifestly unreasonable' implies that a request should be obviously or clearly unreasonable.

18. The Commissioner recognises that, on occasion, 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 vexatious.
19. The term 'vexatious' is not defined in the legislation. In the *Information Commissioner vs Devon County Council and Dransfield*¹ the Upper Tribunal took the view that the ordinary dictionary definition of the word 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 "*...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.
20. In the Dransfield case, the Upper Tribunal 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 lack of proportionality that typically characterise vexatious requests" (paragraph 45).
21. In this case, the council has told the Commissioner that it considers this request to be manifestly unreasonable because it part of an ongoing campaign against it.
22. The Commissioner has considered her guidance² on section 14(1) of the FOIA at paragraph 91 onwards, regarding campaigns, when considering whether or not regulation 12(4)(b) of the EIR was engaged with this request. Paragraph 92 of the guidance points out that the council would need to provide the Commissioner with sufficient evidence as to why it believes the complainant is acting in concert with the previous requestor – or as in this case, acting as the previous requestor's solicitor.

¹ <https://www.judiciary.gov.uk/judgments/info-commissioner-devon-county-council-tribunal-decision-07022013/>

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

23. The council has provided the Commissioner with a letter of complaint from the complainant to the council, dated the 15 November 2016. This letter relates to matters that were already subject to FOIA requests made by other requestors whose requests were found to be vexatious. Then on the 25 November 2016 the complainant made his request.
24. The Commissioner has seen a copy of the complainant's 15 November 2016 complaint letter and it clearly states:

"For a number of years there have been many concerns among parishioners with regard to the way in which affairs of Kirby Muxloe Parish Council have been run... I have been asked to advise some of those parishioners" and "I have suggested to my clients that I write to you to outline some of those issues and difficulties".

25. The council considers that this shows that the complainant is acting as a solicitor on behalf of other requestors who have previously had their requests refused under both section 14(1) of the FOIA and regulation 12(4)(b) of the EIR. These were upheld under the Commissioner's decision notices FS50632398³, FS50645635⁴ and FER0636542⁵.
26. The three previous decision notices also reference that there are three residents working in concert to disrupt the workings of the council, which the Commissioner accepted. So the Commissioner is sufficiently satisfied that the complainant in this case is acting as the solicitor to at least one of these residents due to the nature of his correspondence running on the same themes and his correspondence with the council being only a few months older than the requests in the three previous decision notices.
27. The council has stated that it is relying on the same reasons given in the three decision notices FS50632398, FS50645635, FER0636542 as to why it considers this request to be a continuation of unreasonable persistence and placing a significant burden on its officers.

³ <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2014659/fs50632398.pdf>

⁴ <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2014744/fs50645635.pdf>

⁵ <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2014889/fer0636542.pdf>

28. On reviewing the other requests, the Commissioner is satisfied that the council can rely on those reasons and findings as to why this request in this case is also manifestly unreasonable under regulation 12(4)(b) of the EIR. The Commissioner upholds the refusal.

The public interest test

29. Regulation 12(4)(b) of the EIR is subject to the public interest test. And as with the above analysis, the council is relying on its reasons given for the previous decision notice FER0636542.
30. The complainant considers that for the council to treat this request as vexatious, all requisitions from a solicitor who has acted on behalf of clients who have been critical of the council's actions, and who has been instrumental in the cancellation of leases unlawfully granted by the council is equally unlawful.
31. The complainant has stated that the council, in ignoring its statutory obligations under the FOIA has done so in order to avoid independent scrutiny and prevent him from forming fully informed views on the subject and so preventing his views being made to relevant parties.
32. The complainant considers the council is tactically avoiding statutory transparency in connection with breaches of charitable trusts.
33. The Commissioner notes these concerns by the complainant but as stated in the decision notice FER0636542 at paragraph 77:

"Although in the current case there is a value to the request this is significantly weakened by the overall effect which the complainant's are having upon the council's ability to carry out its functions. It is not in the public interest to allow a situation to form where one, or a few parishioners effectively prevent a public authority from being able to carry out its functions. The Commissioner has also been made aware that the Charity Commission is investigating issues with the Recreation Ground Charity which works alongside the council, and she understands from the complainant that the council's external auditors are continuing to investigate issues relating to the 2015/16 accounts. These ongoing investigations weaken any value in further exacerbating the burden on the council with questions relating to the same issues."

34. The Commissioner's view has not differed in this case and with that finds the public interest lies in favour of the application of regulation 12(4)(b) of the EIR.

Regulation 14 of the EIR – Refusal to disclose information

35. Regulation 14 of the EIR states:

- (1) *If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.*
- (2) *The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.*
- (3) *The refusal shall specify the reasons not to disclose the information requested, including-*
 - (a) *Any exception relied on under regulations 12(4), 12(5) or 13"*

36. In this case, the request was made on the 25 November 2016 and the council did not provide its refusal letter until 5 December 2017, over a year after the request was made.

37. This is quite clearly outside the required 20 working days to issue a refusal notice and therefore the Commissioner finds that the council has breached regulation 14(2) of the EIR.

38. As the council has now issued its refusal notice, the Commissioner does not require it to take any steps but would expect that it takes note of this time delay and look to respond to future EIR requests within the given time frames.

Right of appeal

39. 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

40. 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.
41. 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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