

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 26 April 2019

**Public Authority:** Leeds City Council  
**Address:** Civic Hall  
Calverley Street  
Leeds  
LS1 1UR

#### **Decision (including any steps ordered)**

---

1. The complainant has requested information about the Elmet Greenway. The Council refused the request under regulation 12(4)(b) of the EIR – that it was manifestly unreasonable.
2. The Commissioner's decision is that Leeds City Council has correctly applied regulation 12(4)(b) to the request dated 22 May 2018 and that the public interest in maintaining the exception outweighs the public interest in disclosure.
3. The Commissioner also finds that the Council breached regulation 11(4) by failing to respond to the review request within 40 working days. As the Council has now provided a review response, it is not required to take any steps to comply with the legislation.

## Request and response

---

4. On 22 May 2018 the complainant wrote to Leeds City Council and requested information in the following terms:

*'I would like to make application for copies of all documentation and correspondence in relation to the Elmet Greenway between the dates of and including 8th April 2018 up to and including 22/5/18.*

*This to include all correspondence and emails between councillors and LCC employees and to include Barwick and Scholes Parish Council and Leeds Access Forum.*

*I would also like to be provided with all documentation and copy emails in relation to how the Feasibility study into the Elmet Greenway was approved to be given to Sustrans and all documentation in response to the concerns raised by Mr Alec Shelbrooke MP who emailed LCC in relation to this. I wish to be provided with copies of the tenders submitted and details of all correspondence as to how this was approved including who made the decision. If this was at committee please provide minuted details. There are no stipulated dates for this request.'*

5. On 21 June 2018 Leeds City Council responded. It refused to provide the requested information, citing regulation 12(4)(b) of the EIR – the request for information is manifestly unreasonable. It concluded that the public interest in maintaining the exception outweighed the public interest in disclosure.
6. On the same day the complainant appealed the Council's response to his request. The Council responded on 23 August 2018, maintaining its reliance on regulation 12(4)(b).

## Scope of the case

---

7. The complainant contacted the Commissioner on 4 October 2018 to complain about the way his request for information had been handled. In its initial response, the Council refused to comply stating it considered the request to be 'manifestly unreasonable' on the grounds that it had already spent a significant amount of time responding to earlier requests and that repeated requests asking for 'all correspondence' were placing an unnecessary burden on officer time. However at the review stage,

the Council changed its position; whilst still relying on exception 12(4)(b), it now considered the request manifestly unreasonable on the basis of it being vexatious in nature.

8. The Commissioner considers the scope of the case to be whether Leeds City Council was entitled to determine the request as vexatious and therefore 'manifestly unreasonable' under regulation 12(4)(b) of the EIR; and whether the Council complied with the regulations in terms of timeliness.

## **Reasons for decision**

---

### **Regulation 12(4)(b)**

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

*'For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –*

*the request for information is manifestly unreasonable'*

### *The Council's Position*

10. The Council considers the refused request to be part of ongoing concerns the complainant has regarding the proposed Elmet Greenway. Between 17 December 2017, and the Council's determination of the request as vexatious on 21 June 2018, it had received 5 other requests linked to the greenway proposal.
11. The first was submitted on 8 December 2017, and concerned minutes of meetings, maps etc in relation to the proposed greenway and various correspondence concerning the land at the back of residents' properties. The Council responded on 9 February 2018 with 110 pages of correspondence, a copy of a Local Plan, 3 planning maps and a covering letter explaining the information disclosed.
12. The second was received on 12 February 2018. The complainant was unhappy that the Council's response of 9 February referred to emails that weren't available and that some links to information were not valid. He also asked for the same information as in his first request but to the present date, as well as planning application information for a housing development that would build over a path / railway line. The Council responded on 16 March 2018, explaining that all information held had been provided, and that emails where attachments were not included was due to the fact they had been deleted in the normal course of

business. It also provided 54 pages of correspondence, and a covering email detailing where the planning information could be found.

13. On 7 April 2018 the complainant made a third, similar request for all information concerning the proposed greenway since his request of 12 February to the present, but this time specified it should also include correspondence concerning public rights of way. The Council replied with 63 pages of correspondence on 24 May 2018.
14. On 26 April 2018 the complaint made a fourth request in relation to law firms involved with purchase and compensation claims for the ELOR. ELOR is the East Leeds Orbital Road, where compensation was made available to those affected by compulsory purchase of land. This is relevant to the proposed greenway as the complainant has concerns that that there has been concerted effort to stop residents buying possible greenway land. The Council provided details of the relevant law firm on 27 April 2018.
15. On 9 May 2018 the complainant made a fifth request for two sets of minutes of the Leeds Access Forum. The Council replied on 10<sup>th</sup> May 2018, explaining that one set of minutes did not exist as the meeting was cancelled, and it provided a draft copy of the other set of minutes.
16. On 22 May 2018 the complainant submitted the request that is the subject of this decision notice. The Council responded on 21 June 2018, refusing the request on the basis that it was a 'manifestly unreasonable' burden on the authority given the amount of time and resources that had already been spent responding to similar or related requests concerning the proposed greenway, and that much of the information regarding the proposed greenway was already in the public domain. It estimated that it had already spent over 30 hours responding to the previous requests. The Council made reference to another requester whom it believed the complainant was acting in concert with.
17. The complainant requested a review of the Council's response on the same day. The complainant also sent several follow up emails, including a new information request on 22 June 2018 regarding a Sustrans feasibility study for the greenway, which again the Council refused for the same reasons as the request made on 22 May 2018. This is the subject of a separate decision notice – FER0839190.
18. The Council responded to the review request on 23 August 2018, maintaining its reliance on regulation 12(4)(b) – that the request was manifestly unreasonable. However, due to the communication it had received after the first refusal, its grounds for applying the exception changed from costs/diversion of resources to vexatious. It went on to explain that it had considered the Commissioner's guidance on 'Dealing

with vexatious requests'<sup>1</sup> and concluded that the following factors existed: unfounded accusations; unreasonable persistence; burden on the authority; intransigence; and futile requests. The Council went on to provide quotes from a number of email communications with the complainant that it considered demonstrated these factors. It also reproduced these quotes in response to the Commissioner's investigation; due to their volume, only a sample are provided below:

Appeal email 21 June 2018:

*'I find your refusal unacceptable given the improper conduct and secrecy that has already been disclosed. What are you hiding. I wish to appeal your decision and should my appeal be unsuccessful will be taking the matter further providing evidence of possible criminal and most definitely inappropriate behaviour. We all know how the latest enquiry into Gosport hospital was surprised for years by people in authority. Well you are that person and you are surprising (sic) information. I urge you to think again because I can assure you that when this matter is finally investigated you will have to account for your actions and you just might become rather isolated when this happens. Please reply in a speedy manner and do not take a month to inform me you propose to do nothing as you have done here'*

Email sent 22 June 2018

*'You are making allegations against myself that I am working in concert. Please explain and identify and fully explain the point of your allegation. Please explain if I was working in concert with the police or whoever why is this any concern of yours or any of your business. Please bring my concerns to the attention of your supervisor and provide me with their details. Your job is to respond to freedom of information requests and you have no right or authority to question my reasons for them They are none of your business. Please provide your supervisors details ASAP.'*

*'I believe you are acting in concert to deny me my right to this information and would like an explanation of some merit in refusing this. This is a totally reasonable request and this*

---

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

*information has not been requested previously and is entirely separate to previous requests. I find your assertion that I am acting in concert most alarming. Please supply me the details as to who with or on what basis this is a means of precluding my request. You have not given me a reason for refusing this new abbreviated request .On what grounds is this request manifestly unreasonable. Please clarify.'*

Email sent 28 June 2018

*'The information requested is required for a meeting... If you refuse this request you may wish or in fact be required to attend to explain your actions... may wish to provide your tel no so I can inform all concerned in case you are required to be summoned at short notice. I have now waited 6 weeks for this information and your actions are obstructive and unlawful.'*

19. When the Council did not respond within 40 working days to the review request, the complainant contacted the Council's Chief Executive:

Email sent 21 August 2018

*'I wonder if it would be possible for you to intervene in this concerted effort to deny myself information under the freedom of information act. [Redacted office name] and [redacted officer name] are now in contravention of the law in relation to this. Please could you inform me what you propose to do about their conduct and their breach of the law.'*

The Council officer dealing with the appeal responded on 22 August at 11:01, apologising for the delay and saying the Chief Executive had been briefed as to the reason. She confirmed a response would be made by 29 August 2018. The complainant replied at 11:10 with:

*'Do you not think you should also be providing myself with a reason for your conduct and delay. I find this attitude most concerning and inappropriate. Do I have to email the chief executive yet again to get him to inform me. I expect an immediate reply given the fact that you already in breach of your legal obligations.'*

The officer responded at 11:30, explaining the delay was due to volume of work and staff absences, and again apologised. The complainant responded at 12:10 with:

*'Thank you for your reply but I do not find this excuse acceptable. Please forward to me immediately details of where your breach of legislation can be reported to.'*

The officer responded at 12:20 with the Information Commissioner's details. However, at 12:16, the complainant had emailed the Chief Executive again:

*'It is now over 60 working days since I first requested details under the freedom of information act. On the final day I was refused and when I appealed I was told it would take a further 40 working days yet this deadline has passed. I have requested details of where I can report this breach of legislation but no details are provided. This conduct is not acceptable and my next course of action is going to the media as it appears your employees are a law unto themselves. You may wish to explain why LCC are so loathe to disclose this information'*

20. The Council says that whilst these examples are numerous, they are not exhaustive. In addition to the information requests made by the complainant, he has also had significant contact with other Council officers and departments concerning the proposed greenway including Highways, Regeneration and Parks/Countryside services (20 with one officer alone), which the Council considers further evidence of the unfounded accusations and intransigence:

*'Why is it you are blinkered in your outlook and refuse to acknowledge the vast amounts of public money that can be saved. I can not understand this in todays climate of austerity. Who is actually instructing you to give this policy. Is this coming from yourself or someone else. If someone else please provide their identity. I was under the impression that council employees followed the line of the elected representatives but this does not appear to be the case. Where can we obtain copies of this policy, can you provide us with the minutes of meetings where this policy was actually formulated. As there is now more support against this scheme than for and the neutrality being shown by our elected representatives we believe we should be given the same courtesy as Elmet Greenway and be invited to all meetings concerning this issue. Please provide any reasons for failing to do so. We would however be agreeable to their removal from meetings as the parish council recently introduced.'* (15 April 2018)

*'Thank you for your reply. Unfortunately it did not address the many questions I asked you. Could you please have the courtesy to read my email and actually answer the questions I ask you. I find this rather rude that you answer in such a flippant manner. Your reply is not acceptable and does not cover what was asked. Please provide me with the names and email address of your*

*supervisor or who you are accountable to so I can also take this up with them.'* (24 April 2018).

21. The Council has also said that officers and council ward members have met with the complainant in person and considers that it has been transparent and reasonable in its dealings with him, but that he still remains dissatisfied with the Council's responses.
22. The Council acknowledges that members of the public may be passionate about matters that concern them, but it does not consider it acceptable for staff to be subject to threats, or suggestions that they are engaging in potential criminal behaviour where there is no evidence this is the case. Finally, the Council states in its review letter:

*'Furthermore, it is also clear that these requests are unreasonably persistent, place a significant burden on the authority (as described above), and seem to be made with little purpose. In essence, they are akin to 'fishing expeditions', where each request for all correspondence is followed up almost immediately with another request for all correspondence sent after the date on which the first was made. Whilst the Council readily accepts the requirement to be transparent with regard to its operations, clearly, repeated requests of this nature are unfocused and of little value. Indeed, taken in the context of your wider correspondence, they appear very much to be being used as a means to frustrate, pressure and disrupt officers from undertaking their core duties. Again, such requests are clearly vexatious.'*

### The Complainant's Position

23. The complainant has explained that this request, and others, concern the proposed development of the Elmet Greenway, a cycle/pedestrian/equestrian track that will run to the rear of residents' properties in the area. He maintains that there is 100% objection to the development and as such local residents have formed a group to combat the proposal.
24. The complainant says that there has been no consultation concerning the proposal and that it has been very difficult to obtain any information about it. As a result he began to submit information requests. He believes that there has been a concerted effort to prevent residents buying land that would be affected by the cycle track and false and misleading information being produced to manipulate the price of land. He is further concerned about the contracting process for the feasibility study about the proposed track, and holds that alternatives to the proposal have not been properly considered.



25. The complainant considers that all efforts that he has made to obtain information have been met with total refusal consisting of long delays and breaches in timeliness. Release of the information would, at the very least, allay suspicions of possible corruption and malpractice.

#### The Commissioner's Position

26. In considering the Council's conclusion that the request made on 22 May 2018 was manifestly unreasonable, Commissioner makes reference to her guidance 'Dealing with vexatious requests'. Although this guidance primarily refers to vexatious requests under the FOIA, in practice there is no material difference between a request that is vexatious under this regime, and a request that is manifestly unreasonable on vexatious grounds under the EIR.
27. Whilst there is no definition of the term vexatious in the EIR (or FOIA), Tribunal decisions have provided insight and guidance in determining a request as vexatious. In 'Information Commissioner v Devon County Council & Dransfield', the Upper Tribunal took the view that the ordinary dictionary definition of vexatious is of limited use, as deciding whether a request is vexatious depends on the circumstances surrounding that request. The Tribunal commented that vexatious could be defined as the 'manifestly unjustified, inappropriate or improper use of a formal procedure'. This definition clearly establishes that the concepts of proportionality and justification are relevant considerations in deciding whether a request is vexatious.
28. In the Dransfield case, the Tribunal also found it instructive to assess 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) harassment or distress of and to staff. However consideration of a request as vexatious is not a tick box exercise and the Tribunal noted *'there is, however, no magic formula – all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA.'*
29. The Commissioner's guidance includes a number of indicators that may help to identify a request as vexatious. However these indicators are neither exhaustive nor definitive, and all the circumstances of the case will need to be considered in reaching a judgement as to whether a request is vexatious. Congruous with the Tribunal comments in the Dransfield case regarding circumstantial consideration, the Commissioner's guidance states: *'The context and history in which a request is made will often be a major factor in determining whether the*

*request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(a) applies.'*

30. The Commissioner recognises that, particularly where environmental matters are concerned, the public can be passionate and ardent about issues that concern them and the wider environment. In this case the requests concern a proposed greenway that would offer a vehicle free route for pedestrians, cyclists and equestrians. The complainant, and neighbours, are understandably concerned about the proposal, as it is possible that any route might affect their land and / or properties. The Commissioner appreciates that any public authority should be transparent about all plans it has that will affect the environment of the local community and beyond.
31. However, the Commissioner has not seen any evidence of the secrecy that the complainant alleges. The Council has responded to all requests received up until the refusal notice issued on 21 June 2018. It has provided updated information to similar requests, and conducted itself in an open and transparent manner.
32. The Commissioner notes that, at the current time, the greenway is still only a proposal. The Commissioner has viewed information available online about the proposal, and sees that it is being supported by a charity<sup>2</sup> specifically established by local people to further the greenway's development. The Council provides a page on its website with a summary of the proposed route, along with key documents concerning the feasibility that was undertaken<sup>3</sup>. It emphasises:

*Please be aware that there is currently no identified funding to proceed with detailed design or to deliver this route. This work forms part of ensuring that we have viable and deliverable routes if funding becomes available in the future.*

*If funding is made available, residents can be assured that further public engagement would be undertaken and be a vital part of any work moving forward.*

---

<sup>2</sup> <https://www.elmetgreenway.org/>

<sup>3</sup> <https://www.leeds.gov.uk/parking-roads-and-travel/elmet-greenway>

The Commissioner is therefore not persuaded by the complainant's concerns that there has been no consultation about the project, nor that it is, or has been difficult to acquire information about it. Given that a local group that has formed a charity to support the proposal, she does not agree that there is 100% objection as the complainant maintains.

33. The Commissioner concurs with the Council's position that providing a response to the complainant's repeatedly asking for the same, updated information, on a proposal with no clear funding or way forward, provides no more value than information already available publicly or provided to the complainant. She accepts that the time taken up with responding to the complainant's requests, follow-up emails and criticisms, along with the time that other Council officers are spending on responding to emails places a disproportionate burden on officer time with little or no public benefit.
34. The Commissioner also considers that the language used by the complainant has on several occasions been accusatory and potentially bullying/threatening, with references to criminal and inappropriate behaviour, as well as asking for superiors' details and threatening to email the Council's Chief Executive. She considers this could be distressing to the staff concerned and is unnecessary. The Commissioner notes that the complainant emailed the officer asking for the details of where to report the Council's responses to (or lack of) at 12:10, and at 12:16 emailed the Chief Executive complaining that he'd not had a reply. The officer replied at 12:20. The Commissioner accepts that the Council took excessive time to respond to the review request overall, but does not consider the complainant's expectations regarding response times for the email he sent at 12:10 to be in any way reasonable.
35. The Commissioner therefore agrees with Council's application of regulation 12(4)(b) to the information request made on 22 May 2018, on the grounds it is vexatious in nature.

#### The Public Interest Test

36. Regulation 12(4)(b) is subject to the public interest test. The Council has considered this as follows:

*'The Council is, of course, aware that Regulation 12(4)(b) is subject to the public interest test and that, in addition, we must provide a presumption in favour of disclosure under Reg 12(2). In considering this matter, however, there is currently no formal proposal for the Greenway. Rather this an aspirational scheme that is desired by some members of the community .... If formal proposals were to be brought forward, the Council would,*

*obviously, undertake formal consultation with the community. Consequently, there cannot be said to be any significant public interest in responding to repeated requests of this nature, other than a very high level 'transparency' argument. The number of hours already spent answering the complainant's previous requests is entirely disproportionate to the nature of the scheme and, in truth, the correspondence would not serve to provide any additional information into the public domain than the Council would proffer as a matter of course.... the overwhelming public interest lies in officers of the authority being able to undertake their core functions without disruption... and there is a firm public interest in preventing abusive statements being routinely levelled at officers who are undertaking their roles in a professional and courteous manner.'*

37. The Commissioner has already determined that there is, at best, minimal value in responding to repeated requests about the greenway and issues relevant to the public interest test have been outlined in her position above. She therefore concurs with the Council's position that the public interest in maintaining the exception outweighs the public interest in disclosure.

#### **Regulation 5 - Duty to make information available on request**

38. Regulation 5(2) states:

*'Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt'*

39. The complainant submitted his request on 22 May 2018. However, it was sent at 21:01 and so for the purposes of working days, the Commissioner deems the request to have been received by the Council on 23 May. The Council replied on 21 June 2018, exactly 20 working days after the request was made.
40. The complainant's next request was submitted on 22 June 2018. The Council sent its refusal on 26 June 2018, two working days after.
41. The Commissioner therefore finds there has been no breach of regulation 5(2).

## **Regulation 11 – representations and reconsideration**

42. Regulation 11(4) states:

*'A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the date of receipt of the representations.'*

43. The complainant requested a review of the Council's response to his 22 May 2018 request on 22 June 2018 and the Council replied on 23 August 2018. This was 45 working days after the review request was made and therefore the Council has breached regulation 11(4) of the EIR. The Commissioner understands the pressure created by staff absences, particularly during the summer period, but reminds the Council of its obligations under the EIR and that 40 days to respond is not an unreasonable timeframe.

## Right of appeal

---

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

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

45. 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.
46. 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**