

## Environmental Information Regulations 2004 (EIR)

### Decision notice

**Date:** 21 June 2019

**Public Authority:** Gateshead Council  
**Address:** Gateshead Civic Centre  
Regent Street  
Gateshead  
NE8 1HH

### Decision (including any steps ordered)

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1. The complainant has requested all documents relating to building regulations for a specific address from Gateshead Council ("the Council").
2. The Commissioner's decision is that the Council was entitled to refuse the request as being manifestly unreasonable under the exception at regulation 12(4)(b) of the EIR, and that the balance of the public interest lies in the exception being maintained.
3. However, the Council breached regulation 14(2) of the EIR as it failed to issue a valid refusal notice to the complainant within 20 working days.
4. The Commissioner does not require the Council to take any further steps.

### Request and response

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5. On 5 September 2018, the complainant wrote to the Council and requested information in the following terms:

*"I request a copy of ALL documents relating to Building Regulations (Ref No: **747/73** and Town Planning relating to garage [Named address]).*

*I also request a copy of the planned drawing with the approved stamp (Accepted, Dated, Referenced)."*

6. The complainant sent a further request to the Council on 3 October 2018, as he had not received any response to his request.
7. After the complainant contacted the Commissioner, the Council was advised that it needed to provide a response to the request. Although the Council had previously advised the complainant that any future requests regarding the same or similar subject matter would not be responded to under the FOIA, this specific request fell to be considered under the EIR and therefore a response was required.
8. The Council responded on 1 May 2019. It refused the request, citing exception 12(4)(b) – manifestly unreasonable (vexatious requests).
9. Following an internal review, the Council wrote to the complainant on 9 May 2018. It stated that it upheld its position.

### **Scope of the case**

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10. The complainant contacted the Commissioner further on 30 October 2018, to complain about the way his request for information had been handled.
11. The scope of this decision is to determine whether the Council correctly refused the request, relying on section 12(4)(b) of the EIR. It will also determine if the Council responded to the request in accordance with regulation 14(2) of the EIR.

### **Reasons for decision**

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#### **Regulation 14 – Refusal to disclose information**

12. Regulation 14(2) states that, if a request for environmental information is refused by a public authority under regulation 12(1), which covers the exception at regulation 12(4)(b), the refusal shall be made as soon as possible and no later than 20 working days after the date of the request.
13. In this case, the complainant submitted the information request on 5 September 2018. The Council did not provide a response until 1 May 2019. Although the Commissioner acknowledges that the Council had advised the complainant that any future requests on the same/similar subject matter would not be responded to, as this request fell under the

EIR, a response was required and as such, the Commissioner finds that the Council breached regulation 14(2) of the EIR.

### **Regulation 12(4)(b) – manifestly unreasonable request**

14. Regulation 12(4)(b) provides that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable.
15. The exception will typically apply in one of two sets of circumstances; either where a request is vexatious or where compliance with a request means a public authority would incur an unreasonable level of costs, or an unreasonable diversion of resources. The public authority's starting point is that the request is a 'repeated request' and, ultimately vexatious on the grounds that it would place an unreasonable burden on the public authority's resources.
16. The term 'vexatious' is not defined in the legislation. In *Information Commissioner vs Devon County Council and Dransfield* 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 established that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.
17. 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 previous course of dealings, the lack of proportionality that typically characterise vexatious requests*" (paragraph 45).
18. However, the Commissioner is also keen to stress that in every case, it is the request itself that is vexatious and not the person making it.
19. The Commissioner's guidance on vexatious requests suggests that the key question a public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear, the Commissioner considers that public authorities should weigh the impact on the authority and balance this against the purpose and value of the request. In addition, where relevant, public authorities also need to take into account wider factors such as the background and history of the request.

### **The complainant's position**

20. The complainant has advised that he has requested information, which he believes is a simple request and should not be seen as vexatious.
21. He says that he is aware that the Council removed the documents requested from its archives in 2003 and so he is unable to view them other than by making a request for information.
22. The complainant says that the Council should be able to provide the requested information to him and that he is making a very reasonable request.

### **The Council's position**

23. The Council's position is that the complainant has been in contact with it regarding the same issue since 2006. It has advised the Commissioner that it has received 10 FOIA requests relating to this matter since 2006 despite all information having previously been provided to the complainant.
24. The Council has provided a copy of a letter sent to the complainant in 2016, where it responded to a similar request for information. The letter advises that all held information had been provided previously.
25. The Council's position is that, as the complainant has already asked for the information on several previous occasions, and as he has already been informed it is not held, the request is vexatious.
26. It has argued that it would be manifestly unreasonable for it to respond to the request, since it would require the use of scarce Council resources, to continue to correspond about information that the complainant is aware is not held.
27. The Council has also advised the Commissioner that the complainant has previously commenced legal proceedings against it in relation to this matter. These proceedings have either been dropped by the complainant or dismissed by the Courts.

### **The Commissioner's view**

28. The Commissioner has carefully considered both the complainant and the Council's arguments and reviewed all of the information and evidence presented to her by both parties in order to reach her decision.
29. There is no question in the Commissioner's mind that the request itself is not necessarily, in isolation, particularly burdensome. Had it been the first and only request which the complainant had made, the judgement

could have been different; she might have expected the Council to provide a full response to the complainant's request. However, the Council is entitled to draw the Commissioner's attention to its previous interaction with the complainant.

30. The evidence provided to the Commissioner shows that the requests that the complainant has made relate to the same underlying theme.
31. The Commissioner notes that she has issued a previous decision notice<sup>1</sup>, for the same complainant, regarding a similar request for information. That decision notice records that the complainant sought redress through the Council's complaints procedure, the Local Government Ombudsman and the Courts; however, either his actions were dropped or else his position was not upheld. It has not been found that the complainant has suffered an injustice in respect of this planning issue.
32. The Commissioner therefore considers that she has evidence to suggest that the complainant is using the FOIA as means to re-open, re-visit and re-litigate matters which have already been closed.
33. It is clear that there has been a breakdown of trust between the Council and the complainant relating to a grievance which stretches back more than ten years.
34. The Commissioner's decision is that the request is manifestly unreasonable and that the exception at regulation 12(4)(b) of the EIR is, therefore, engaged.

### **Public Interest Test**

35. The exception at regulation 12(4)(b) is subject to the public interest test set out in regulation 12(1)(b) EIR. Therefore, the Commissioner has gone on to consider whether in all the circumstances of the case the public interest in maintaining the exception at regulation 12(4)(b) outweighs the public interest in complying with the request.
36. There is a general public interest in openness and transparency, and complying with the request would enhance that public interest. There will always be some public interest in disclosure to promote transparency and accountability of public authorities, greater public awareness and understanding of environmental matters and more effective participation in environmental decision-making.

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<sup>1</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2614289/fs50778479.pdf>

37. However, there is a strong public interest in ensuring that scarce public resources are not disproportionately used to respond to requests for information from an applicant who is clearly dissatisfied about an issue and seeks to keep it alive until there is a conclusion or resolution he considers favourable. That is simply not what information access legislation was designed to achieve and consequently there is a strong public interest in ensuring that the EIR is not brought into disrepute from a manifestly unjustified and improper use of the legislation.
38. Whilst the Commissioner is happy to accept that the complainant himself has a particular interest in the information, she takes the view that any wider public interest would have been served by the Council's planning processes at the time of the relevant planning application and is, in any event, outweighed by the ongoing burden to the Council in dealing with the complainant's repetitive requests.

### **The Commissioner's decision**

39. The Commissioner's decision is that the Council was entitled to refuse the request as being manifestly unreasonable under the exception at regulation 12(4)(b) of the EIR, and that the balance of the public interest lies in the exception being maintained.

## Right of appeal

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40. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

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

41. 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.
42. 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**