

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

Decision notice

Date: 9 February 2016

Public Authority: Essex County Council
Address: County Hall
Market Road
Chelmsford
CM1 1QH

Decision (including any steps ordered)

1. The complainant requested information regarding signage to prevent the use of motorcycles. In relation to one of the requests, the council said that the information was not held. When the complainant did not accept this, the council said that it wished to rely on the exception under regulation 12(4)(b) of the Environmental Information Regulations 2004 ("the EIR"). This exception relates to requests that are manifestly unreasonable. In relation to another request, the council supplied information however the complainant disputed that this information had answered the request. The council then said that it wished to rely on the exception under regulation 12(4)(b). The decision of the Information Commissioner ("the Commissioner") is that the exception was correctly applied on this occasion and that the public interest was in favour of maintaining the exception. He has found a breach of regulation 14(2) because the exception was not relied upon within 20 working days. The Commissioner does not require the council to take any steps.

Request and response

FS50600505

2. On 4 August 2015, the complainant requested information from the council in the following terms:

"With reference to information requested by the Highways Improvement

Design Team regarding the ordering of the Motorcycles Prohibited sign for the Chancellor Park estate following the public consultation ended on [sic] 12 January 2015, please could you let me know:

Which department was the request made to, what information was requested and on what date?"

3. The council sent a response on 5 August 2015 in which it said that it was going to treat the request as "business as usual". This said,

"The further information requested by the Highways Improvement Design Team when they received the order for the signs from the Development Management team would have been in connection with the precise design requirements, quantity and proposed positioning of the signs to ensure the signs were correctly made to order. The exact date of this request for further information is unknown".

4. The complainant replied on 11 August 2015 stating that she wanted her request to be dealt with under the terms of the Freedom of Information Act 2000 ("the FOIA"). She said that she was seeking the following information:

"Could I please have a copy of the communication requesting the information, or it is was requested by telephone, a copy of the file note which indicates this."

5. The council responded on 13 August 2015. It said that the information was not held because the request was made verbally and no note was taken.

6. On 20 August 2015, the complainant requested an internal review because she considered that it was unlikely that the information was not held.

7. The council replied on 23 September 2015. It said that it had decided not to conduct an internal review on this occasion and cited the exception under regulation 12(4)(b) of the EIR. This exception relates to manifestly unreasonable requests.

FS50598230

8. On 13 July 2015, the complainant requested information from the council in the following terms:

"Please can I have details of what works were scheduled by Design and Consultancy Team as at 15 January 2015 for the period to 30 June

2015. Could I please have a list of jobs which were scheduled for this period but have not yet been started."

9. The council responded on 24 July 2015. It asked for clarification to help it to identify the information requested.
10. On 25 July 2015, the complainant wrote to the council again and requested information in the following terms:

"In January 2015 I was informed by the Essex County Council Chief Executive that a job I have requested had been passed to the Design and Consultancy team. Before clarifying what schedule of information I require, I think we had better establish whether Ms Killian was actually telling the truth. So could you please:

*"Confirm that the team still existed in January
Confirm that the project to install a 'motorcycles prohibited' sign was passed to this team following public consultation, as stated by Ms Killian
Inform me when the team was disbanded and who took over its role".*

11. The Commissioner understands that the council sent a reply via email on 31 July 2015. The complainant explained that it said that the Chief Executive had mistakenly referred to the Design and Consultancy Team and that the sign had been scheduled for before the end of the year.
12. On 7 August 2015, the council contacted the complainant again. The council said that it understood that the complainant was interested in information about the works relating to the motorcycle sign, which it said she had received. It said she would need to provide clarification if anything further was required.
13. On 11 August 2015, the complainant wrote to the council and said,
"I have no reason to believe the most recent email. I would therefore like to see a copy of the works schedule which features this job".
14. On 18 August 2015, the council provided a copy of a job sheet with a redaction made under regulation 13(1) of the EIR. This exception relates to personal data.
15. The complainant wrote to the council on 20 August 2015. She said that the document did not provide the requested information because it did not show that the motorcycle sign had been scheduled for completion before the end of the year.

16. The council responded on 23 September 2015. It declined to conduct an internal review and referred to the exception under regulation 12(4)(b) of the EIR relating to manifestly unreasonable requests.

Scope of the case

17. The complainant contacted the Commissioner on 8 October 2015 to complain about the way her requests for information had been handled. The complainant asked the Commissioner to consider whether the council had correctly relied on the exception under section 12(4)(b) to refuse her requests made on 11 August 2015. For the avoidance of doubt, those requests are as follows:

FS50600505 - *"Could I please have a copy of the communication requesting the information, or it is was requested by telephone, a copy of the file note which indicates this."*

FS50598230 - *"I have no reason to believe the most recent email. I would therefore like to see a copy of the works schedule which features this job".*

Reasons for decision

Regulation 12(4)(b)

18. Regulation 12(4)(b) of the EIR provides the following:

"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".

19. In accordance with regulation 12(1)(b), information may be withheld under regulation 12(4)(b) if:

"...in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information".

20. The Commissioner has published guidance on applying section 14(1) of the FOIA which relates to vexatious requests. While the guidance above is focused on section 14(1) of the FOIA, the Commissioner's general approach to applying regulation 12(4)(b) of the EIR is the same in

relation to vexatious requests. For ease of reference, it can be accessed here:

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

21. 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 patently obvious when requests are vexatious. In cases where it is not so clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. This will usually be a matter of objectively judging the evidence of the impact on the authority and weighing this against any evidence about the purpose and value of the request. Public authorities may also take into account the context and history of the request where relevant.
22. As in many cases which give rise to the question of whether a request is vexatious, the evidence in the present case shows a history of previous information requests and complaints. The council relies on this history when characterising these request as vexatious.
23. The background to this matter is that the complainant and the council have been engaged in correspondence about the Chancellor Park development since 2012. Chancellor Park is a housing development in the East of Chelmsford, built in 1998. The complainant's personal interest is that she lives in Chancellor Park. Since 2012, the complainant has expressed concerns to the council about the Chancellor Park development and has complained about issues to do with the adoption process by the council and the maintenance of grass verges. The Commissioner understands that her main grievance relates to motorcycle access, and this issue is at the heart of the requests which form the basis of this complaint to the Commissioner.
24. Some background detail explaining how the problem with motorcycles came about is included in an email from the council's former Chief Executive to the complainant on 19 August 2014. It states:

"...the cycle/footpath was provided as part of the Chancellor Park development to link into the greater cycle network from Chelmsford to Boreham. Its existence allows cyclists and pedestrians to gain access through the business park to Sainsbury's and Springfield using an off carriageway route thereby avoiding the main roads. The original intention was to form a bus link between Chancellor Park and the business park at this location with the cycle/footpath adjacent to it. Both were constructed but the bus link was never formally opened due to a failure to secure the bus route and although it was closed off with a

variety of barriers and temporary features it did become a recognised route for motorcycles.

Prior to Essex County Council adopting the highway around the Chancellor Park development i.e. before we were able to take ownership and responsibility for maintaining the highway as part of the adoption process, the developer agreed to remove the bus link and remodel the cycleway/footpath and surrounding landscape. The removal of the bus link took away the access for motorcycles and unfortunately, motorcyclists appear to be using the cycleway to continue their journey”.

25. As a result of these problems, the council decided to begin the legal process for erecting signage to prevent the use of motorcycles. The council advertised the proposed changes to allow for public objections on 18 December 2014. It was decided that the work could take place however the Commissioner understands that there have been significant delays to this process, which have been the source of frustration for the complainant and the focus of various requests to the council about progress. The Commissioner’s understanding is that at the time of writing this notice, the motorcycle signage has been put in place but this was not the case at the time of these requests.
26. When it decided to refuse these requests as vexatious at the internal review stage, the council said the following:

“...since January 2015 we have received over 25 contacts/requests from you relating to two matters; that of a road sign and the other to do with road adoption agreements. We have confirmed in previous reviews that we were amiss in that we did not provide you with the information you requested and have since rectified this where we have been able. You have been informed that the road sign will be put in place and although we appreciate the frustration you have experienced in getting this issue resolved we are unable to continue to address repeated/similar requests relating to these matters. ECC feels that the burden on this occasion in continuing to address your requests is disproportionate and as such manifestly unreasonable”.
27. When the Commissioner wrote to the council to ask for more information about its refusal, the council mainly reiterated the concerns expressed above. It explained that the burden imposed by the complainant’s contact had put a strain on the limited resources available to coordinate and respond to all information requests received by the council. The council added that raising the same concerns with the council’s former Chief Executive had also caused confusion and increased the risk of duplication. The council told the Commissioner that the complainant had

expected processes regarding the Chancellor Park development to move along more quickly than they had and this had given rise to frustration and various information requests.

28. The council supplied the Commissioner with a bundle of correspondence between itself and the complainant between the dates 19 August 2014 and 4 December 2015. The evidence included previous requests made by the complainant. The Commissioner has had to exclude some of this evidence because it post-dates the requests that form the subject of this complaint. However, other requests which appear to have been made within the relevant date range are as follows:

Request - "Could you please tell me, with regard to the following statement by Joanna Killian:

Signage to prevent use by motorcycles can be applied but this requires a formal legal order that is open to objections by other members of the public. We are taking legal advice on its use and in the meantime, are arranging for the legal process to commence.

- 1. What the legal process entails.*
- 2. How it ensures that an individual who raises an objection is not someone who is committing the offence the signage concerns.*
- 3. What progress has so far been made in initiating this process with respect to putting up a sign prohibiting motorcycles at the link between Chancellor Park Estate and Springfield Business Park.*
- 4. From who ECC is taking advice on the use of such a sign?"*

Request – Re: Motorcycles prohibited sign on pathway between Springfield Business Park and Chancellor Park Estate.

I understand that the intention to erect the above described signage is now being advertised. Could you please tell me where?"

Request – "As the consultation for this has now finished, could I please have the following further information:

- 1) What steps have been taken to progress the erection of the sign since the consultation period ended on 12 January?*
- 2) What remains to be done before the sign is erected and what is the schedule for this?*
- 3) What delays have occurred in this process to cause it to overrun the estimated duration of 3-4 months?"*

Request - "On 30 July 2007 my solicitor wrote to me regarding my purchase of a property on the Chancellor Park estate. She informed me of a bond which supported the agreement between the developer that built the estate and the Highway Authority...She also informed me that [name] of the Highways Department estimated adoption would be complete by September 2007. I would like the following information:

- 1. A copy of the bond*
- 2. The reason for delay in adoption until 2014"*

Request – "I understand that you are unable to find a copy of the agreement between the developer and ECC for [area of Chancellor Park]

Could you please confirm that you have a record that an agreement existed"

Request – "Could you please tell me on what date the adoption of [area of Chancellor Park] was finalised"

Request - "Could I please have a copy of the policy employed by ECC Highways Department with regard to archiving and destroying records"

Request - "Since...the Right to Know staff no longer feel obliged to answer my requests, I am also requesting from yourself an explanation as to

- 1. When this sign promised by [name] last September and recommended by Essex Police in January 2014 is going to make an appearance and*
- 2. Why the work was not completed by end-June as predicted by Joanna Killian"*

Request – "I understand from ex CEO Joanna Killian that allocation was made from the current year's budget for the above sign. Please could I see a copy of the record of this allocation".

Request – "Exactly what is meant by "the developer did not complete the adoption agreement – what remained to be done?"

Why were these roads allowed to be built without an adoption agreement in place?

Which roads did have a valid adoption agreement in place?

Request – "Could you please tell where the Design and Consultancy team fits into the organisation structure?"

Request – “Electrical connections required for erection of motorcycles prohibited sign.

Could you please explain why the requirement for electrical connectors results in a long lead time?”

Request – “Could you tell me which stage of this process installation of the motorcycles prohibited sign is as at today's date?” [sic]

29. The complainant argued that her requests were not vexatious. The Commissioner invited the complainant to explain why she was of this view. In response, the complainant pointed to comments she had made directly to the council about the refusal as follows:

“The Freedom of Information Act was introduced to force public authorities to be transparent and not cover up and lie about their activities. When a member of the public has been lied to by an authority (which is undeniably the case) and is using FOI to try to get the truth, this is EXACTLY what the Act is for. You have no grounds whatsoever to deem this request vexatious and have clearly not wanted to answer it properly from the start, when you tried to take it off FOI and treat it as a general enquiry. There would have never been any need for me to submit any requests at all if ECC had not lied to me in the first place and there have only been so many because of the evasive and incomplete answers”.

30. In other correspondence to the council on 25 September 2015, the complainant said that another authority had tried to rely on the same exclusion in the past when she had asked a question that was “too awkward”. She argued that the number of previous requests a person had made is not relevant and that it was also not appropriate to rely on regulation 12(4)(b) at internal review stage.
31. Turning now to the question of whether the requests were vexatious in the Commissioner’s view. It is clearly a matter of public interest that public authorities are accountable and transparent about their actions. In this case, the complainant has expressed particular concerns about the use of an area of land for motorcycle access. Such issues have an environmental impact and where that is the case, there is a particular public interest in transparency.
32. The council concedes that there were significant delays regarding the signage following the public consultation which ended on 12 January 2015. In an email to the complainant on 31 July 2015, the council provided the following explanation for some of this delay:

"The ordering of the signs was passed to the Highways Improvement Design Team (formerly known as the Design and Consultancy Team prior to this function falling under the remit of our strategic highway partners, Essex Highways) following the completion of the public consultation. At this stage the team requested further information; although due to an office move and staff role changes regrettably this information was not provided and the signs were not ordered. I offer this by way of an explanation only and not an excuse as the delay in implementing the signage is of course unacceptable".

33. The council also explained that there was a "long lead in time due to the electrical connection required" and also that the reactive nature of highways work sometimes resulted in delays while other works take priority. The council added that as the police were able to enforce, the signage was a lower priority than would otherwise have been the case. It is apparent that the complainant was given indications of when the signage might be completed which subsequently turned out to be incorrect, and this has contributed to some extent to the ongoing nature of the correspondence, resulting in some understandable frustration. It also appears that there were some weaknesses in the council's responses to previous information requests, which the council has acknowledged, that has also contributed to the chain of correspondence to some extent.
34. On the point made by the complainant about the appropriateness of relying on regulation 12(4)(b) at internal review stage, not relying upon the exclusion at first was a technical breach of the legislation (addressed below) however there is nothing to prevent a public authority from relying on an exclusion following review. The mechanism of internal review is designed to allow the council a further opportunity to consider the request, which may sometimes result in an exclusion being relied upon which was not mentioned initially. It is important however that the judgement that a request was vexatious should not be based on the fact that a complaint was subsequently made. In this case, the council has been able to justify to the Commissioner that it had cause to consider that the requests were vexatious based on circumstances as they existed prior to the complainant's requests for internal review.
35. The complainant has also incorrectly asserted that previous requests made are not relevant. The Commissioner's guidance and many previous decisions explicitly confirm that the wider context of a request is a relevant matter. It would be too artificial to disregard the wider context in many cases. In this case, it is fair in the Commissioner's view for the council to consider these requests in the context of the wider pattern of behaviour by the complainant and to characterise them as vexatious. The requests clearly form part of an ongoing chain of

correspondence and requests relating to Chancellor Park, which has been difficult to manage and which the Commissioner accepts has resulted in a burden in terms of volume and frequency over a significant period of time. The main theme most recently is the complainant's frustration with delays regarding the motorcycle signage.

36. The Commissioner agrees with the council that the complainant has taken a disproportionate and inappropriate approach overall to the pursuit of these concerns. It is not the Commissioner's view that the council has relied on the exclusion because the questions posed were considered to be "too awkward" as alleged by the complainant. The Commissioner is also sympathetic to the reason why the council had tried to move away from responding to formal information requests in order to deal with at least some of the correspondence as "business as usual". Responding to formal information requests can be resource intensive and given the nature of an enquiry, this is not necessarily the most productive way forward.
37. The Commissioner's impression was that the complainant had sought to use the legislation as a vehicle for putting pressure on the council and complaining about delays relating to the Chancellor Park development, particularly in relation to the motorcycle sign. The council did not provide the Commissioner with copies of correspondence pre-dating 19 August 2014 so the Commissioner was therefore not able to assess the relevance of any related correspondence leading up to that date, although it seems the complainant has been in contact with the council about aspects of the Chancellor Park development since 2012. In relation to correspondence about the motorcycle signage in particular, the requests appear to form part of a mainly unproductive attempt to try speed up the process and a wholly unproductive effort to unpick what she had been told in good faith by particular officers about the motorcycle sign despite the council acknowledging and apologising for its previous failures and making a commitment to monitor progress more closely. In correspondence on 31 July 2015, the council said:

"I have now been assured by the Development Management Group Manager that all information has now been supplied and it is expected that the signs will be in place by the end of the calendar year as there is a long lead time due to the electrical connections required. Senior colleagues have been tasked with monitoring the progress of this scheme to ensure that there are no further delays and the revised completion date is met.

It is accepted and recognised that unfortunately, on this occasion, we failed to deliver a specific service and sincerely apologise for the upset and inconvenience this matter has caused you".

38. The council has been able to provide evidence to the Commissioner that it did express its concerns to the complainant about the burden the complainant's ongoing level of contact was putting on its resources prior to formally relying on regulation 12(4)(b) to refuse these requests. In correspondence on 7 July 2015, the council wrote to the complaint to confirm that she had been given a designated contact for a period of three months because of the volume and frequency of her correspondence. However it is apparent that the complainant made little attempt to modify the level and nature of her contact in view of these concerns other than to agree to use the single point of contact, choosing instead to focus the blame for the manner in which she was pursuing the issues purely on the council's failures.
39. It is also worth noting that it is not the case that there was no other way for the complainant to pursue concerns she had other than making a large number of information requests. Where there is a valid complaint about a background issue, local authorities also offer a formal complaint process and if that does not resolve the issues, the matter can sometimes be considered further by the Local Government Ombudsman. The complainant was specifically directed towards this route in correspondence from the council. The council also explained that the police could take enforcement action regarding motorcycles without the sign as the route is a designated footpath, which is one of the reasons why the sign was not given higher priority, and the complainant was also advised of this.
40. The Commissioner notes that in addition to the volume and frequency of requests and related correspondence, the complainant had also made accusations of dishonesty on the part of council officers, including the council's former Chief Executive. Her engagement with the council is generally characterised by criticism and distrust. As noted in paragraph 29 above, the complainant accused the council of covering up and lying about its activities, and in the request referred to in paragraph 10 this accusation was directed at the council's most senior officer, the former Chief Executive. The Commissioner has also been provided with evidence demonstrating that the complainant contacted the council suggesting that comments she considered were harassing relating to her requests on The What Do They Know website may have been made by a council officer. The council said that it could not take this forward without sufficient evidence and said that it was unlikely that it would have been a council officer. The complainant continued to allege that it was unlikely that it was not a council officer based on the nature of the comments.
41. The council had explained to the complainant that any previous indications of when the sign might be put in place had been provided in

good faith at the time. While the Commissioner can appreciate the inevitable frustration that would arise when a particular time frame is mooted for completion that does not then materialise, there is no evidence available to the Commissioner to indicate that the previous indications were not given in good faith as the council said or that any council officers were harassing the complainant online. The reactive nature of highways jobs and need to reassess priority as new matters arise adds appropriate context to the general delays encountered. Where specific problems were identified, the council acknowledged them and apologised. It was wholly inappropriate for the complainant to accuse the council of lying or covering up its activities. While there appear to have been some weaknesses in the council's request handling as well, the council has acknowledged this too to some extent and it is apparent that the complainant had been provided with a good deal of information in relation to the signage and other concerns about Chancellor Park.

42. The Commissioner considered the value of these particular requests in view of the context. In relation to the request under FS50600505, the outstanding issue is that the complainant asked for a copy of any communication relating to information requested regarding the ordering of the sign (which the council said resulted in a delay). The council said that there was no written record after having previously provided an explanation of what would have been asked for. The complainant said that she considers this to be unlikely as it would be, in her opinion, highly inappropriate for a Senior Customer Services Officer at the council to make such a statement based only on what an employee remembers doing six months ago. In relation to the request under FS50598230, the outstanding issue is that the complainant would like to see recorded evidence to prove that the council's statement that the work had been scheduled for before the end of the year was the truth. She does not accept that the information provided discloses this information.
43. In relation to the request under FS50600505, the council had explained the reason for the delay, apologised for it and committed to monitoring progress more closely. Even if there was any recorded information, it seems unlikely that it would be of assistance in this matter in view of the circumstances. It seems to be the case that the complainant is seeking to try to disprove what the council had already told her when there is no particular reason to doubt the council's explanation.
44. As it appeared to the Commissioner that the information provided under FS50598230 did not confirm that the work was scheduled for the end of the year, the Commissioner discussed with the council whether there was any additional information held that would have confirmed this. The

council said that the job sheet provided was the only information held, and it accepted that it did not show the scheduled work date. The council conceded that the fact that this information is not recorded by Highways is problematic and it said that it would be seeking to address this issue in the future. The Commissioner considers that it would have been better if the council had explained this to the complainant at the time of the request, however, given the nature and tone of the correspondence up until that point, it does seem unlikely that the complainant would have accepted that response in any case because of the clear background agenda of trying to prove that the council was "lying". The fact is, no amount of recorded information would necessarily prevent further delays to the signage being put in place in any event.

45. The Commissioner has acknowledged the reasons for the complainant's frustration in this case and the council has accepted the part it has played in the development of that situation, however, that does not justify the lengths that the requester has gone to in pursuit of these issues. There were much better ways of pursuing those concerns. The Commissioner was not satisfied that there was sufficient value to these requests to outweigh the concerns expressed by the council and described above relating to the volume, frequency and nature of the previous correspondence with the complainant, and the impact this had had on the council's limited resources by this point. As such, the Commissioner considers that the council correctly relied on the exclusion under regulation 12(4)(b) in relation to both requests and that the public interest did not favour disclosure.

Procedural issue

46. Regulation 14(2) provides that a refusal to provide information should be made within 20 working days. In this case, the council relied on the exclusion under regulation 12(4)(b) at the internal review stage. This was a breach of the legislation.

Right of appeal

47. 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

48. 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.
49. 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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Wycliffe House
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