

## **Freedom of Information Act 2000 (Section 50) Environmental Information Regulations 2004**

### **Decision Notice**

**Date: 20 January 2011**

**Public Authority:** Yaxley Parish Council  
**Address:** Amenity Centre  
Main Street  
Yaxley  
Peterborough  
PE7 3LU

### **Summary**

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The complainant made a request for information to Yaxley Parish Council ("the Council") on 9 February 2010. The Council refused to comply with the request on the grounds that it considered it to be vexatious under section 14 of the Freedom of Information Act 2000 ("the Act"). The Commissioner investigated and found that requested information was environmental and should have been considered under the Environmental Information Regulations 2004 (EIR), and as such the correct exception should have been 12(4)(b). The Commissioner finds that the Council did not provide sufficient evidence for 12(4)(b) to be engaged.

### **The Commissioner's Role**

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1. The Environmental Information Regulations (EIR) were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR.

## The Request

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2. On 9 February 2010 the complainant submitted the following request:

*"Here is a summery [sic] of Freedom of information requests requested over the last 12 months. They are still all outstanding.*

- 1. I would like a copy of the council minutes that agreed the purchase of the 6m high netting at Queens Park.*
- 2. I would like a copy of the specification and tenders for the 6m high netting at Queens Park.*
- 3. I would like a copy of the tenders for planting and seeding discussed in your minutes dated 28<sup>th</sup> October 2008. I acknowledge you have replied but your answer did not address the request fully and you failed to reply to my following question.*
- 4. I would like a copy of all the payments made to DP Stafford landscaping over the last 2 years.*
- 5. I would like a copy of the tenders to have the Queens Park posts removed (May 09) to comply with planning regulation. I remind you that you informed Planning Enforcement this tender was preventing Yaxley Parish Council from complying with their demands.*
- 6. I would like a copy of the email from your planning consultant discussed in open council and contained within the Councillors briefing pack. I acknowledge you have refused this but you failed to explain why.*
- 7. I would like a copy of the funding agreement between Yaxley Parish Council and the Football Foundation for Queens Park.*

3. The Council provided the following response in a letter dated 19 February 2010:

*"Thank you for your letter of 9<sup>th</sup> February 2010. However, under section 14(1) of the Freedom of Information Act, I deny your request for this information. Your request is vexatious, harassing and designed to disrupt and annoy this Council."*

## The Investigation

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### Scope of the case

4. On 19 February 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled.

The complainant specifically asked the Commissioner to consider the following points:

- The Council's application of section 14 to his seven part request

The complainant also stated that the Council do not offer the option of an internal review as per its Freedom of Information policy.

## Chronology

5. The Commissioner wrote to the Council on 21 April 2010 informing it of the complaint and asking the Council to take the following action within 10 working days:

- provide the information requested or,
- indicate where a response has been previously provided to that part of the request (if applicable) or
- issue a valid refusal notice.

6. The complainant telephoned the Commissioner on 19 May 2010 stating that further to the Commissioner's letter of 21 April, he had not yet received a response from the Council. He contacted the Commissioner later that day to inform him that he had now received a response from the Council and that he wished to pursue his complaint.

7. The Council's letter dated 19 May 2010 stated the following:

*"...we write to advise you that under section 14(1) of the Freedom of Information Act, I deny your request for this information. Your request is vexatious, harassing and designed to disrupt and annoy this Council.*

*This Council has no form of review for your request."*

8. In a letter dated 28 June 2010 the Commissioner asked the Council to provide arguments to support its application of section 14(1) within 20 working days.

9. The Council provided a response to the Commissioner in a letter dated 6 July 2010 in which it provided the following arguments for each of the seven points of the request:

1. The Minutes of every meeting are uploaded to our website for all to see once they have been approved and [name redacted] has had access to the Minutes he requested.
2. The Council do not reveal tenders to the public as it is likely to upset contractors who provide the quotes. It is not best practice to let each contractor see what the other has quoted.

3. [Name redacted] is already aware that planting and seeding was carried out by Cllr David Stafford in his own time as he is a retired landscaping expert. This matter has already been the subject of a Standards Board investigation who determined that if a Councillor wishes to carry out works on behalf of the Council free of charge then that is perfectly acceptable. There were no tenders as none were needed.
  4. Again [name redacted] is at perfect liberty to see our accounts for payments as detailed within the annual external audit. No requests have been made to view the accounts. However, [name redacted] made a complaint to Moore Stephens our external auditor who, we understand, has answered [name redacted] queries.
  5. See 2 above
  6. The appeal that is taking place is of a private and confidential nature and has been minuted as such with a request for the public and press to be excluded from the meeting at the time of discussion and is therefore no [sic] for public view.
  7. Again the funding from the Football Foundation is recorded in minutes that have been open to view by the public together with the accounts as approved by the external auditor.
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10. The Commissioner telephoned the Council on 29 July 2010 and left a voicemail message asking the Council to return the Commissioner's call. The Council did not call the Commissioner.
  11. The Commissioner wrote to the Council on 30 July 2010, he asked additional questions in relation to the application of section 14 and further questions based on the Council's response to points 2, 5 and 6 above in which the Council appears to suggest reliance on additional exemptions but had not quoted any specific exemptions other than section 14. He asked that a response be provided within 20 working days.
  12. The Council emailed the Commissioner on 20 August 2010 to inform him that it had written directly to the complainant in an attempt to resolve the matter. The Council did not provide the Commissioner with a copy of the letter sent to the complainant, nor did it supply a response to the Commissioner's letter of 30 July 2010.
  13. The Commissioner emailed the Council on 23 August 2010 to ask for a copy of the letter sent to the complainant.
  14. On 24 August 2010 the Commissioner received a telephone call from the complainant; during this call the complainant informed the Commissioner that he had received a letter from the Council. The complainant forwarded a copy to the Commissioner which was received

- by email the same day. The letter was very similar to the one provided to the Commissioner dated 6 July 2010.
15. The Commissioner telephoned the Council on 26 August 2010 and left a voicemail message asking the Council to return the Commissioner's call. The Council did not call the Commissioner.
  16. In a letter dated 31 August 2010 the Commissioner informed the Council that he no longer needed a copy of its letter to the complainant. However, the Commissioner did ask that the Council provide a substantive response to his letter of 30 July 2010 within 10 working days.
  17. The Commissioner did not receive a response from the Council, he therefore wrote to the Council on 20 September 2010 informing it that he would be proceeding to a Decision Notice in this case.

## **Analysis**

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### **Substantive Procedural Matters**

#### **Regulation 2 - Interpretation**

18. The Commissioner has considered the requested information and in his view it constitutes environmental information. The case to support this would be that information about work on a football park and information about planting and seeding is by its very nature information on an activity which directly affects the use of the land and therefore the state of the land. It could therefore be defined as information on plans and or activities affecting the state of the elements of the environment (primarily land). In reaching this view, the Commissioner has considered the following regulations under the EIR:

Regulation 2(1)(a) provides that –

“the state of the elements of the environment, such as air and atmosphere, water, soil, 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.”

Regulation 2(1)(c) provides that –

"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;"

19. In the Commissioner's view this constitutes environmental information under regulation 2(1)(c) as it is on an activity affecting or likely to affect the elements of the environment in 2(1)(a), in particular the land and landscape. As the information is environmental it should have been considered under the EIR.
20. As the Council has failed to engage meaningfully with, the Commissioner, he has been left with no choice but to read across to the EIR for the most similar exception and therefore had to consider the relevance of regulation 12(4)(b) (manifestly unreasonable requests).
21. Although the Council refused the complainant's seven part request as vexatious, by virtue of section 14 of the Act, the Commissioner has had to assess each request on its own merit as follows:

### **Request 1**

*"I would like a copy of the council minutes that agreed the purchase of the 6m high netting at Queens Park."*

#### Council Response to ICO

The Minutes of every meeting are uploaded to our website for all to see once they have been approved and [name redacted] has had access to the Minutes he requested.

#### ICO Initial Assessment

Having checked the Council's website and read all of the minutes which are available, the Commissioner has been unable to find the minutes which the complainant has requested.

### **Request 2**

*"I would like a copy of the specification and tenders for the 6m high netting at Queen Park."*

#### Council Response to the ICO

The Council do not reveal tenders to the public as it is likely to upset contractors who provide the quotes. It is not best practice to let each contractor see what the other has quoted.

### ICO Initial Assessment

No specific exception was quoted to the Commissioner, other than section 14 of the Act to refuse this request. The Commissioner can therefore only deduce from the response he has received that the Council were implying it wished to rely on a specific exception, other than section 14 or regulation 12(4)(b). Despite the Commissioner asking the Council further questions on this point, the Council failed to respond.

### **Requests 3 and 4**

"I would like a copy of the tenders for planting and seeding discussed in your minutes dated 28<sup>th</sup> October 2008. I acknowledge you have replied but your answer did not address the request fully and you failed to answer my following question

I would like a copy of all payments made to DP Stafford landscaping over the last 2 years."

### Council Response to the ICO

1. [Name redacted] is already aware that planting and seeding was carried out by Cllr David Stafford in his own time as he is a retired landscaping expert. This matter has already been the subject of a Standards Board investigation who determined that if a Councillor wishes to carry out works on behalf of the Council free of charge then that is perfectly acceptable. There were no tenders as none were needed.
2. Again [name redacted] is at perfect liberty to see our accounts for payments as detailed within the annual external audit. No requests have been made to view the accounts. However, [name redacted] made a complaint to Moore Stephens our external auditor who, we understand, has answered [name redacted] queries.

### ICO Initial Assessment

1. Regulation 5(1) imposes an obligation on a public authority to make recorded information that it holds available on request (subject to issuing an appropriate refusal notice when it can rely on an exception)

Therefore, where a public authority does not hold information in relation to the request they will have discharged their duties under the EIR if they have informed the applicant in writing that they do not hold the information. The Commissioner asked the Council to provide him with a copy of the letter or email which was sent to the complainant advising him that this specific information is not held. The Council failed to do this.

2. With regards to the accounting details which have been requested, the Commissioner asked the Council to explain whether this information was only available for viewing or if copies of the accounts would be produced on request. The Commissioner noted that the Parish Council publication scheme states that accounting information is available in hard copy only at a cost of 10p per sheet and asked the Council if the complainant had been given the option of receiving the information upon the payment of a fee, or if the specific information be extracted from the accounts and provided to the complainant. The Council failed to respond to these further questions.

### **Request 5**

*"I would like a copy of the tenders to have the Queens Park posts removed (May 09) to comply with planning regulation. I remind you that you informed Planning Enforcement this tender was preventing Yaxley Parish Council from complying with their demands"*

### **Council Response to the ICO**

See answer to request 2

### **ICO Initial Assessment**

No specific exception was quoted to the Commissioner, other than section 14 of the Act to refuse this request. The Commissioner can therefore only deduce from the response he has received that the Council were implying it wished to rely on a specific exception, other than section 14 or regulation 12(4)(b). Despite the Commissioner asking the Council further questions on this point, the Council failed to respond.

### **Request 6**

*"I would like a copy of the email from your planning consultant discussed in open council and contained within the Councillors briefing*



*pack. I acknowledge that you have refused this but you failed to explain why. Also I suggest you consult with Cllr Dewar and or Ms Dellor explaining this item was discussed in open Council and gain their council"*

#### Council Response to the ICO

The appeal that is taking place is of a private and confidential nature and has been minuted as such with a request for the public and press to be excluded from the meeting at the time of discussion and is therefore no [sic] for public view [sic].

#### ICO Initial Assessment

No specific exception was quoted to the Commissioner, other than section 14 of the Act to refuse this request. The Commissioner can therefore only deduce from the response he has received that the Council were implying it wished to rely on a specific exception, other than section 14 or regulation 12(4)(b). Despite the Commissioner asking the Council further questions on this point, the Council failed to respond.

#### **Request 7**

*"I would like a copy of the funding agreement between Yaxley Parish Council and the Football Foundation for Queens Park"*

#### Council Response to the ICO

Again the funding from the Football Foundation is recorded in minutes that have been open to view by the public together with the accounts as approved by the external auditor.

#### ICO Initial Assessment

Having checked the Council's website and read all of the minutes which are available, the Commissioner has been unable to find the details about the funding agreement which the complainant has requested. The Commissioner therefore asked that the Council provide him with either a copy of the agreement or direct him to them on Council's website. The Commissioner also asked that if the funding agreement was not available on the Council website, could it explain whether this information would only available for viewing or if copies will be produced on request. The Commissioner again noted that the Parish Council publication scheme states that hard copy information is available at a cost of 10p per sheet. The Commissioner asked if the

complainant had been given the option of receiving the information upon the payment of a fee or if alternatively, could the specific information be extracted from the relevant documents and provided to the complainant. The Council failed to respond to these further questions.

22. Given that the Council failed to respond to the further questions put to it by the Commissioner, he has gone on to consider the application of regulation 12(4)(b).

### **Regulation 12(4) (b) – Manifestly unreasonable**

23. Regulation 12(4) (b) states that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable. There is no definition of the term “manifestly unreasonable” but the Commissioner’s view is that the word “manifestly” implies that a request should be obviously or clearly unreasonable. There should be no doubt as to whether the request was unreasonable.
24. The Commissioner recognises the similarities between section 14 of the Act and regulation 12(4)(b) of the EIR. In particular the Commissioner considers that a request that could be considered vexatious or repeated under section 14 of the Act is likely to be manifestly unreasonable for the purposes of the EIR. However, whilst section 14 of the Act provides that a public authority can simply refuse to comply with a request it considers to be vexatious or repeated, the same can not be said for regulation 12(4)(b). Regulation 12(4)(b) is an exception under the EIR and if engaged, is subject to the public interest test at regulation 12(1)(b).
25. The Commissioner’s approach when considering vexatious and repeated requests is to consider the following questions:
  - Could the request fairly be seen as obsessive or manifestly unreasonable?
  - Is the request harassing the authority or causing distress to staff?
  - Would complying with the request impose a significant burden in terms of expense and distraction?
  - Is the request designed to cause disruption or annoyance?
  - Does the request lack any serious purpose or value?

The Commissioner is also mindful of the presumption in favour of disclosure at regulation 12(2).

## Context and history

26. The Council have indicated that the history in this case has an important bearing on its decision. It explained that the complainant has been making requests for information for two years which have now become obsessive. However, the Council failed to expand on this further when questioned and asked to provide evidence.

27. The Commissioner's Awareness Guidance on the subject of vexatious and repeated requests states that:

"A request may not be vexatious in isolation but when considered in context (for example if it is the latest in along series of overlapping requests or other correspondence) it may form a wider pattern of behaviour that makes it vexatious".

This was the view of the Tribunal in *Betts v Information Commissioner EA/2007/0108* (19 May 2008). In that case the Tribunal considered not just the request but the background and history to the request as part of the long drawn out dispute between the parties. That request was considered vexatious when viewed in context as it was a continuation of a pattern of behaviour.

28. However, the Awareness Guidance also states that:

"The context of a request may occasionally indicate that it should not be considered vexatious. For example, your previous dealings with a requester may show that they have a good reason for making persistent requests...For example; a series of successive linked requests may be necessary where disclosures are unclear or raise further questions that the requester could not have foreseen. Similarly, in the context of a dispute, a request may be a reasonable way to obtain new information not otherwise available to the individual".

The complainant has submitted that if information had been supplied when requested a great deal of unnecessary correspondence would have been avoided and that the matters have only arisen because of the Council's failure to respond to simple straightforward requests for information when requested.

29. The Commissioner is of the opinion that an important point to note is that it is the request rather than the requester which must be vexatious. A useful test is whether the information would be supplied if it were requested by another person, unknown to the Council. If this would be the case, the information should normally be provided as the Council cannot discriminate between different requesters. Although, it

may be reasonable for the Council to conclude that a particular request represents a continuation of behaviour which it has judged to be vexatious, it is not the view in this case that the previous behaviour of the requester can justify judging the request as unreasonable.

30. Despite the failure of the public authority to supply adequate reasons, the Commissioner has endeavoured to consider the five questions set out at paragraph 25 in relation to the request in this case.

### **Could the request fairly be seen as obsessive?**

31. In his Awareness Guidance on the subject of vexatious and repeated requests the Commissioner recognises that obsessive requests are usually a very strong indication of vexatiousness. The Guidance states that:

“Relevant factors could include the volume and frequency of correspondence, requests for information the requester has already seen, or a clear intention to use the request to reopen issues that have already been debated and considered”.

32. The Commissioner is of the opinion that there is not a strong argument relating to the volume and frequency of correspondence here as the Council have failed to supply the Commissioner with any evidence relating to the volume of requests. The complainant has himself admitted, and supplied evidence to show that he has made repeated requests because he did not receive a response from the Council. This shows that the complainant has been persistent but does not prove that he is obsessive.

33. The Council has submitted that the complainant is in some cases requesting information that has already been supplied or is freely available on the Council’s website.

34. The Commissioner’s Awareness Guidance on the subject of vexatious and repeated requests states that:

“It will be easiest to identify an obsessive request where an individual continues with a lengthy series of linked requests even though they have independent evidence on the issue (e.g. reports from an independent investigation). The more independent evidence available, the stronger the argument will be’.

35. The Commissioner accepts that at times there is a thin line between obsession and persistence and each case should be determined on its own facts. As stated in paragraph 31 above, the Commissioner

considers that an obsessive request can most easily be identified as where a complainant continues with a request despite being in possession of other independent evidence or adjudication on the same issue. In this case, the Commissioner does not consider that the nature of the request falls within this definition of obsession, there is no evidence that the matters related to the information requested by the complainant have been resolved by due process under other mechanisms. The matters the complainant is concerned about remain unresolved and there is a possibility that more information could be made available to assist understanding of the issue.

36. The Commissioner also notes that even if a request could be classed as obsessive, if there is a serious purpose or value behind the request then despite the other findings it may not be deemed as vexatious, dependent on the circumstances of each case. In this case the Commissioner considers that the requests did have legitimate purpose and value.
37. For the above reasons the Commissioner cannot conclude that the request is obsessive. The complainant has felt the need to repeat his requests due to the lack of responses or information he has received. Had the information been provided in the first instance the complainant would not have repeated his requests. The Commissioner has some sympathy with this, as his own experience of dealing with the public authority seems to mirror that of the complainant.

### **Is the request harassing the authority or causing distress to staff?**

38. The Commissioner notes in his Awareness Guidance on the subject of vexatious and repeated requests that;

“The focus should be on the likely effect of the request (seen in context), not on the requester’s intention. It is an objective test – a reasonable person must be likely to regard the request as harassing or distressing.”

39. The complainant has proposed that requests he has made should not have the effect of harassing the Council as they merely involve copying documents already in existence rather than requiring the Council to compile and collate specific items of information.
40. The request for information by itself does not contain any evidence of deliberate harassment. However, the Council have submitted that the requests have the effect of harassing the Council. It has argued that these requests are designed to cause annoyance, expense and burden

on the Parish Clerk. However, no evidence has been supplied in support of this argument.

41. Whilst it is acknowledged that the receipt of repeated requests on the same topic can be distressing for the member of staff dealing with the correspondence, the Council have not submitted any significant arguments in relation to this area. The Commissioner is of the opinion that the requests themselves do not have the effect of harassing or causing distress as they appear to request information that should be readily available if the Council's records are managed appropriately.

**Would complying with the request impose a significant burden in terms of expense and distraction?**

42. The Commissioner's Awareness Guidance on the subject of vexatious and repeated requests states that;

"You need to consider more than just the cost of compliance. You will also need to consider whether responding would divert or distract staff from their usual work."

43. In order to demonstrate this, the Council have claimed that the majority of the requests have already been answered and they will create expense and a burden on the clerk. The Council have failed to supply the Commissioner with any evidence to support this. Therefore the Commissioner finds it difficult to conclude that the requests would impose any significant burden.

**Is the request designed to cause disruption or annoyance?**

44. This factor relates to the requester's intention, the complainant has not explicitly stated that he wants to cause disruption or annoyance in relation to this request. However he is persuaded that the Council's lack of engagement is actually more of a motivation to get answers to the requests made amid a growing sense of frustration.

**Does the request lack any serious purpose or value?**

45. The Council have asserted that the information requested at points 1, 3, 4 and 7 is available to the complainant either via the Council's website, or directly from the Council either via inspection or via the Council's publication scheme upon the payment of a fee.
46. The Council has implied that the information requested at points 2, 5 and 6 has been refused because an exemption applies to this

information which allows the Council to withhold it. Despite the Commissioner asking further questions about which exemptions the Council wished to rely upon, the Council failed to respond.

47. The Commissioner has inspected the Council's website and is satisfied that there is no published information on the website which matches the requested information. It is also worth noting that the complainant made a request to view the accounting information on 25 May 2010, the Council failed to respond to this meeting request as indicated at paragraph 9.
48. The Council have confirmed that the complainant's requests relate to the works at Queen's Park and that the issue of these works has been the subject of a planning appeal. Although the Council have suggested that the complainant is behaving in an inappropriate manner towards members of the Council, the Commissioner cannot take this as evidence of vexatiousness as the Council have failed to provide the Commissioner with any evidence to support this. The Commissioner therefore does not agree that the requests lack serious purpose or value.
49. In light of the above, the Commissioner believes that the available evidence does not demonstrate that the request is manifestly unreasonable and therefore does not engage regulation 12(4)(b). As the exception is not engaged, the Commissioner has not gone on to consider the public interest test inherent in this exception.
50. In reaching this decision the Commissioner notes that the findings are made on the circumstances at the time of the request and that this finding does not preclude the Council from using these provisions again in respect of requests from the same applicant if the Council objectively find that the provisions apply.

## **Procedural Requirements**

### **Regulation 14**

51. The Commissioner finds that the Council ought to have considered the request under the EIR rather than the Act. In failing to deal with the request under the correct access regime, the Commissioner finds that the Council was in breach of Regulation 14(3) of the EIR.

## **The Decision**

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52. The Commissioner's decision is that the public authority did not deal with the following aspects of the request for information in accordance with the EIR:
- It incorrectly applied the exception at regulation 12(4)(b) to the request.
  - In providing a refusal notice that referred to exemptions under the Act rather than exceptions under the EIR, the Council breached regulation 14(3).

## **Steps Required**

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53. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- The Council should provide the complainant with the requested information at part one of his request
  - The Council should reconsider the remaining elements of the request and either provide the information or issue a valid refusal notice, which does not rely on regulation 12(4)(b), and that complies with regulation 14 of the EIR. Unless the exception from the duty to confirm or deny under 12(5)(a) is claimed, then any refusal notice should explicitly confirm or deny whether the information is held.
54. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

## **Failure to comply**

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55. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.



## Other matters

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56. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

### **Engagement with ICO**

During the course of his investigation, the Commissioner has encountered considerable delay on account of the Council's reluctance to meet the timescales for response set out in his letters. Furthermore, the Commissioner has been met with resistance in his attempts to understand the Council's reasons for handling the request as it did.

Accordingly the Commissioner does not consider the Council's approach to this case to be sufficiently co-operative, or within the spirit of the Act. As such he will be monitoring the Council's future engagement with the ICO and would expect to see improvements in this regard.

### **Handling Requests under Appropriate Legislation**

In this case the Council failed to recognise and process the request under the appropriate legislation. In order to ensure future requests are handled appropriately, the Commissioner advises the Council to refer to the Code of Practice issued under section 16 of the EIR, paragraph 1 of which states:

"All communications to a public authority, including those not in writing and those transmitted by electronic means, potentially amount to a request for information within the meaning of the EIR, and if they do they must be dealt with in accordance with the provisions of the EIR. It is therefore essential that everyone working in a public authority who deals with correspondence, or who otherwise may be required to provide information, is familiar with the requirements of the EIR and this Code in addition to the FOIA and the other Codes of Practice issued under its provisions, and takes account of any relevant guidance on good practice issued by the Commissioner..."

## Right of Appeal

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57. 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,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Dated the 20<sup>th</sup> day of January 2011**

**Signed .....**

**Graham Smith  
Deputy Commissioner  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

### Freedom of Information Act 2000

#### Vexatious or Repeated Requests

**Section 14(1)** provides that –  
“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious”

**Section 14(2)** provides that –  
“Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with a previous request and the making of the current request.”

### Environmental Information Regulations 2004

**Regulation 2(1)** In these Regulations –

“the Act” means the Freedom of Information Act 2000(c);

“applicant”, in relation to a request for environmental information, means the person who made the request;

“appropriate record authority”, in relation to a transferred public record, has the same meaning as in section 15(5) of the Act;

“the Commissioner” means the Information Commissioner;

“the Directive” means Council Directive 2003/4/EC(d) on public access to environmental information and repealing Council Directive 90/313/EEC;

“environmental information” has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form 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;
  - (d) reports on the implementation of environmental legislation;
  - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c) ; and
  - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of elements of the environment referred to in (b) and (c);

“historical record” has the same meaning as in section 62(1) of the Act;  
“public authority” has the meaning given in paragraph (2);

“public record” has the same meaning as in section 84 of the Act;

“responsible authority”, in relation to a transferred public record, has the same meaning as in section 15(5) of the Act;

“Scottish public authority” means –

- (a) a body referred to in section 80(2) of the Act; and
- (b) insofar as not such a body, a Scottish public authority as defined in section 3 of the Freedom of Information (Scotland) Act 2002(a);

“transferred public record” has the same meaning as in section 15(4) of the Act; and

“working day” has the same meaning as in section 10(6) of the Act.

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

**Regulation 5(1)** Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part

and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

### **Regulation 11 - Representation and reconsideration**

**Regulation 11(1)** Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant's request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request.

**Regulation 11(2)** Representations under paragraph (1) shall be made in writing to the public authority no later than 40 working days after the date on which the applicant believes that the public authority has failed to comply with the requirement.

**Regulation 11(3)** The public authority shall on receipt of the representations and free of charge –

- (a) consider them and any supporting evidence produced by the applicant; and
- (b) decide if it has complied with the requirement.

**Regulation 11(4)** 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 receipt of the representations.

**Regulation 11(5)** Where the public authority decides that it has failed to comply with these Regulations in relation to the request, the notification under paragraph (4) shall include a statement of –

- (a) the failure to comply;
- (b) the action the authority has decided to take to comply with the requirement; and
- (c) the period within which that action is to be taken.

### **Regulation 12 - Exceptions to the duty to disclose environmental information**

**Regulation 12(1)** Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if –

- (a) an exception to disclosure applies under paragraphs (4) or (5); and
- (b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

**Regulation 12(2)** A public authority shall apply a presumption in favour of disclosure.

**Regulation 12(4)** For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –

- (a) it does not hold that information when an applicant's request is received;
- (b) the request for information is manifestly unreasonable;

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

**Regulation 14(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.

**Regulation 14(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.

**Regulation 14(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; and
- (b) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3).

**Regulation 14(4)** If the exception in regulation 12(4)(d) is specified in the refusal, the authority shall also specify, if known to the public authority, the name of any other public authority preparing the information and the estimated time in which the information will be finished or completed.

**Regulation 14(5)** The refusal shall inform the applicant –

- (a) that he may make representations to the public authority under regulation 11; and
- (b) of the enforcement and appeal provisions of the Act applied by regulation 18.