

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

Decision notice

Date: 16 November 2011

Public Authority: East Herts District Council
Address: The Council Offices
The Causeway
Bishop's Stortford
Hertfordshire
CM23 2EN

Decision (including any steps ordered)

1. The complainants made 16 requests for information mainly related to financial probity or governance.
2. The Commissioner's decision is that East Herts District Council has not dealt with the requests for information in accordance with the Freedom of Information Act 2000 and Environmental Information Regulations 2004 by:
 - Incorrectly withholding information under the vexatious exclusion, and, in the case of environmental information, the manifestly unreasonable exception.
 - Taking too long to respond in and provide the information.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - Reconsider the requests and either provide the requested information or issue a valid refusal notice which complies with section 17 of the FOIA or regulation 14 of the EIR as appropriate.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply 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.

Request and response

5. The complainants made a number of information requests to the council, 16 of which are dealt with in this decision notice. Annex A details each of these requests including the date of the request, initial refusal and the review response.
6. East Herts District Council ('the council') responded to the earliest of these requests on 2 December 2010. It stated that the council are not obliged to supply the information requested as it considers that section 14 of the Freedom of Information Act 2000 ('FOIA') is engaged and therefore it does not have a duty to disclose the information.
7. Following an internal review the council wrote to the complainant on 26 January 2011. It stated that each request was considered individually and in each case the request continues the identified thematic pattern relating to financial probity and/or governance and/or attempts to re-open previously considered areas. The council stated that each request imposes a significant burden on the council, has the effect of harassing the public authority and could otherwise be fairly characterised as obsessive or manifestly unreasonable.
8. The council also refused the complainant's requests under the vexatious exclusion on 9 February 2011, 23 March 2011, 14 April 2011, 26 May 2011 and 2 June 2011. Internal review responses maintaining the refusals under the vexatious exclusion were also issued on 23 March 2011, 26 April 2011 and 28 April 2011.
9. The council refused request F10/305 under the personal data exemption and upheld its decision in the review of that case on 9 December 2010.

Scope of the case

10. The complainants contacted the Commissioner to complain about the way their requests for information had been handled. They specifically claimed that the council:
 - fundamentally misunderstood and misapplied section 14;
 - did not respond in 20 days;
 - failed to provide information requested under the FOIA;

- failed to respond to an appeal within reasonable time;
 - provided misleading information in response to a Freedom of Information request; and
 - discussed the questions raised with councillors whilst withholding the appeal response.
11. The council requested that the Commissioner considers the requests from Mr and Mrs Clark as part of an orchestrated campaign and apply the same arguments as to why the vexatious exclusion applies to the requests from both parties. The Commissioner has considered this appropriate for the reasons given in the 'Reasons for decision' section below.
 12. The Commissioner considered whether the council were correct to apply the vexatious exclusion to the 16 information requests and whether the council responded in a timely manner.
 13. Due to the likelihood of information existing in relation to the requests which falls within the definition of 'environmental information' in the Environmental Information Regulations 2004 ('the EIR'), the Commissioner has also considered whether the council were correct to apply the manifestly unreasonable exception at regulation 12(4)(b).
 14. During the Commissioner's investigation the council confirmed that it wishes to rely on the vexatious exclusion in relation to request F10/305. Therefore the Commissioner has not considered the personal data exemption under section 40(2) of the FOIA.
 15. In relation to F11/060 and F11/117 the complainant identified that some of the information requested could be their own personal data and as such should be dealt with as subject access request under the Data Protection Act 1998. The complainant's personal data is therefore outside the scope of this decision notice and is dealt with under separate data protection cases.
 16. In relation to F10/382 and F10/383 the complainant considered that some of the information could be their own personal data. The council maintains that there is no personal data held in relation to F10/382 and the Commissioner finds no evidence to dispute this. In relation to F10/383, the Commissioner is aware that the complainant's personal data consists of letters of which they are either the author or recipient and as such have seen the information. Any information already relayed to the complainants is outside the scope of this decision notice.
 17. The Commissioner has not deemed it appropriate to consider whether the council have provided misleading information in response to a

request as this issue has been superseded by the application of the vexatious exclusion. Neither has the Commissioner deemed it within his remit to consider the issue of the council discussing the questions raised with councillors.

Reasons for decision

Acting in concert

18. The Commissioner is aware that the complainants are a married couple who both resigned from their positions as Independent Councillors of the council in September 2010. They believed their positions were untenable due to their opinion that both officers and the Executive of the council displayed a continual lack of transparency and openness.
19. The council has submitted that the complainants' use of information requests is politically motivated, as evidenced in their press statements and comments, letters to the press and their own website. While the council accepts that this is a legitimate use of the FOIA it is of the view that the requests should be seen as part of an orchestrated campaign and should be amalgamated together when considering the burden placed on the council not only financially but also morally in that staff feel harassed by the complainants bringing the FOIA into disrepute.
20. The council maintain that the complainants' use of 'we' and 'us' in relation to their activities to 'shed light on what is going on at East Herts Council'¹ provide evidence that they are acting in concert. The Commissioner was provided with examples of such statements from the complainants' website and from press cuttings.
21. The council also drew the Commissioner's attention to the approach taken in a number of cases related to the Forestry Commission Scotland². In these cases the Commissioner accepted that a number of applicants were acting together, in pursuance of a campaign, and this was a relevant consideration as to whether the requests were vexatious.
22. The Commissioner recognises that there is nothing in the Act which prevents the aggregation of requests from disparate sources for the purposes of section 14 of the Act, and he is mindful that section 12 of

¹ <http://www.ehcounsel.moonfruit.com/>

² FS50176016, FS50176942, FS50187763, FS50190235

the Act makes specific provision for such a process for the consideration of costs, where two or more requests have been made by different persons who appear to the public authority to be acting in concert, or in pursuance of a campaign.

23. For the above reasons, the Commissioner considers that it is reasonable in the circumstances for the council to have taken the view that the complainants are acting as part of a campaign.
24. However, being part of a campaign does not necessarily make a request vexatious but can be taken into account as previous behaviour of the complainants. If the request forms part of a wider campaign or pattern of requests, the serious and proper purpose must justify both the requests themselves and the lengths to which the campaign or pattern of behaviour has been taken. This will be examined in further detail below.

Vexatious requests

25. Section 14(1) states that a public authority is not obliged to comply with a request for information if the request is vexatious.
26. The Commissioner's guidance 'When can a request be considered vexatious or repeated'³ states:

"Deciding whether a request is vexatious is a balancing exercise, taking into account the context and history of the request. The key question is whether the request is likely to cause unjustified distress, disruption or irritation. In particular, you should consider the following questions:

- Could the request fairly be seen as obsessive?
- 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?"

Context and history

27. The council have informed the Commissioner that unlike many individuals who make FOI requests, the complainants are not concerned

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with a single piece of information, or a single specific issue. It has stated that the requests involved in this decision are but a minor issue in a protracted and indefinite campaign and there is no indication that the resolution of this appeal would satisfy the complainants and bring a close to their submission of FOI requests.

28. The council have stated that it has been mindful of the role of public scrutiny, but has also been guided by decisions the Commissioner has previously reached. In particular, a case involving Birmingham City Council⁴ where the complainant held that his membership of a Local Access Forum (LAF) placed on him a duty to perform an overview and scrutiny of the public authority and justified his "extensive use of the FOIA Act [sic]". In that case the Commissioner did not agree that membership of the LAF conferred any enhanced right of access under the FOIA. The council consider that the circumstances of the complainant in the Birmingham case (membership of a local forum, politically active, with a desire to subject the Authority to scrutiny) are comparable to the positions adopted by the complainants.
29. The council have stated that the campaign has been publicly conducted and widely published by the complainants themselves as evidenced by their frequent letters to the press, comments and statements made in the press, and the information available on their own public website.
30. The Commissioner acknowledges the complainants website 'East Herts Uncovered'⁵ and the 58 newspaper articles and letters provided by the council as evidence of the campaign but also notes that only 29 of these articles and letters were written before the vexatious exclusion was applied and therefore the remaining 29 should not be taken into account for the purpose of this decision.
31. The Commissioner does not dispute that the requests are part of a campaign and indeed, the complainants themselves have publicly stated that;

"The administration has gone out of its way to make life difficult for us. We resigned as councillors, on principle, as we could not fulfil the promise on our election leaflet of 'More questions, more answers', but if

⁴ http://www.ico.gov.uk/~media/documents/decisionnotices/2006/DECISION_NOTICE_FS50078594.ashx

⁵ <http://www.ehcounsel.moonfruit.com/>

[...a named Councillor] thinks we are giving up he may be disappointed.”⁶

32. However, the Commissioner is mindful that the context of a request may also indicate that it should not be considered vexatious. The following paragraph in the guidance ‘When can a request be considered vexatious or repeated’⁷ demonstrates this:

“Many previous cases of vexatious requests have been in the context of a longstanding grievance or dispute. However, a request will not automatically be vexatious simply because it is made in the context of a dispute or forms part of a series of requests. There may be genuine reasons for this. 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. You should not use section 14 as an excuse to avoid awkward questions that have not yet been resolved satisfactorily. You must always look at the effect of the particular request and consider the questions set out below.”

33. In relation to the context and history of the requests, the complainants have explained that while they were Councillors, their legal rights of access to information were not upheld by the council and they encountered great difficulty obtaining information which should have been readily available to members. They had to resort to formal freedom of information requests as the only means of obtaining answers to reasonable questions.
34. The complainants have stated that they are carrying out the wishes of the Secretary of State, Eric Pickles, for people to act as ‘armchair auditors’ and question their local authority's spending. They have commented that by definition, armchair auditors need to ask questions about financial management and governance. Claiming that asking questions about financial management and governance is ‘unacceptable behaviour’ and refusing to answer requests for information about council

⁶ Herts and Essex Observer, September 23 2010.

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spending, by classing such requests as vexatious, wilfully undermines the Secretary of State's initiative.

35. The complainants have also submitted that the council has been inconsistent in its application of the vexatious exclusion which displays that the council has treated the requesters, rather than the requests as vexatious. In December 2010 and January 2011, two detailed requests for the actual costs of by elections referred to in previous refused requests, one of which, F10/385, is including in this decision notice, were responded to in full. Although for different financial data, these requests were very similar in nature to those refused earlier in December 2010 as vexatious. In the absence of the usual Information Manager these were recognised as valid requests and answered without any apparent problem. The complainants commented that whilst the regular Information Manager was away, the officer handling information requests answered all four requests of a financial nature⁸ submitted by them in good time and without finding the requests to be vexatious.
36. It was also brought to the attention of the Commissioner that the council's disclosure log shows that in January 2010 an answer was provided to a detailed request about advertising income from the council's magazine, Link. On 15 February 2011, the complainants submitted a simple request for similar but more recent information and the Council took over 20 days to respond and then refused the request as vexatious. The complainants argue that this inconsistency does not apply the rule of considering every request for information individually and on its own merits.
37. As the Commissioner considers that it is the request rather than the requester which must be vexatious, to arrive at a balanced opinion, consideration has been given to the five questions stated at paragraph 26.

Can the request fairly be seen as obsessive?

38. In his guidance 'When can a request be considered vexatious or repeated'⁹ the Commissioner recognises that obsessive requests are

⁸ F10/391, F11/012, F11/033 and F11/034

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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”.

39. The council have stated that the requests are demonstrably obsessive and manifestly unreasonable on the basis of the number, nature and frequency of the requests. It has also stated that there is a very high volume and frequency of correspondence such that the request can be fairly seen as obsessive.
40. According to council figures, the complainants have submitted 115 information requests since 2007, with 32 of these being made in 2011 alone. In the period of time that the complainants have been submitting requests, their requests equate to 10% of all requests received. The council have also stated that the complainants have sent in excess of 5500 emails to recipients in the council since July 2009.
41. The council understands that a request cannot be judged vexatious purely on the basis that the person who submitted that request had previously submitted one or more vexatious, though unrelated requests. However the council's review concluded that the requests, although not repeated in the sense that they were not requests for the same information, formed a pattern of obsessive thematic requests relating to financial probity and/ or governance and/ or attempts to re-open previously considered areas.
42. In order to justify the number of requests made, the complainants have stated that the Secretary of State is actively encouraging individuals to ask financial questions of their local councils and that initial financial enquiries need to be precise and focused to ensure that precise and focused answers are received. When those answers are not forthcoming or anomalies appear, further questions are required to drill down and get the facts. The complainants have questioned at what point does the “volume of requests submitted and the inter-related nature of the requests” turn a valid financial enquiry into a vexatious one? They maintain that their questions have been meticulous and probing, but not obsessive or unreasonable and that a vexatious ruling in this case could completely undermine the positive work of “armchair auditors”.
43. The complainants explained to the Commissioner that the number of requests submitted in Nov 2010, i.e. 13, was unusually large because three specific events arose in quick succession: the Hunsdon by-election, the start of the council's budget process and the Auditor's

response to the objection to the council's accounts. It was further explained that as the council had started consultation on its budget for 2011/12 and had recently implemented an emergency budget cutting front line services, in the complainants opinion, it was only natural that a number of questions should be posed at this time about council spending to better inform their response to their consultation. They commented that some of the questions may appear similar but each has a specific and distinct purpose and none are frivolous. The requests covered a wide range of issues and areas and just happened by coincidence of time to be submitted close together.

44. In relation to the number of emails sent to the council, the complainants have stated that most FOI requests to the council have involved multiple emails (initial request, chasing up late response, submitting appeal, clarifying appeals, chasing up again) and when the council misinterprets requests the number of emails can rise swiftly. They provided examples of one request (F11/035) resulting in 25 emails to the council and another (F10/305) resulting in over 40 emails. They also asserted that any correspondence whatsoever with the Council tends to require follow-up reminder emails.
45. The complainants also highlighted to the Commissioner a letter published in the local press from the chairman of the council's audit committee. This letter stated that since the complainants resigned as councillors, they have sent more than 1000 emails to the council. In response to this the complainants argue that if the figure of 1,000 is correct, it is not because they have asked unnecessary questions, but because they refuse to be fobbed off. They believe that in essence, it serves to show how much taxpayer money has been wasted by the council, which claims to be open and transparent, by failing to answer emails promptly and properly.
46. In order to assess whether the volume of requests and correspondence is obsessive, the Commissioner has considered that such requests and correspondence should be adequately linked. The council have acknowledged that although many of the requests often fall into broad categories of governance and financial management/probity, the detailed areas and subjects of their requests can vary wildly. The complainants have submitted that they do not consider that the similarity of subject matter is enough for the requests to be seen as a continuation of previous request and thus infected by the history of those requests.
47. The Commissioner has considered in detail the subject matter of the 43 requests submitted by the council as requests material to the council's application of the vexatious exclusion. It is noted that 30 of these requests were responded to with the remainder being refused as

vexatious. Of these 30, 11 do relate to financial matters but within this theme the requests vary from, for example, information relating to the East Herts Independent Remuneration Panel, to costs for a youth conference to costs for a dog agility facility at a local park. The remaining 19 requests can be construed as falling into the broad category of governance but vary from, for example, waste collection, to external communication strategies to the council's official policy on authorising photographs.

48. The Oxford Dictionary definition of 'governance' is;

"the action or manner of governing a state, organisation etc."

It is feasible to conceive that every request submitted to a district council could relate to governance in its broadest sense. Therefore, the Commissioner's view is that this category is too wide ranging to be used to link requests in order to class them as obsessive and therefore vexatious. He considers that the examples given in paragraph 47 display the variety of topics the requests relate to.

49. In relation to the council's submission that the complainants have sent over 5500 emails to the council since July 2009, it is the Commissioner's view that this should not be used to demonstrate that the requests are obsessive. This is because the council have provided the Commissioner with a spreadsheet of the number of emails sent each month and, upon analysis, it can be calculated that 4575 of these emails were sent while the complainants were councillors. In the absence of evidence to the contrary, it cannot be assumed that these emails do not concern councillor business. Of the 990 emails sent since the complainants resigned as councillors, again it cannot be assumed that these emails are connected to the requests and can validly be taken into consideration.

50. In relation to the council's submission that the complainants have made 115 requests since July 2007 with 32 of these being in 2011 alone, the Commissioner notes that the 32 in 2011 cannot be considered as part of this decision notice as those requests were made after the council's application of the vexatious exclusion.

51. When examining the possible factors that can be taken into consideration as to whether the requests can fairly be seen as obsessive, referred to in paragraph 38, the Commissioner noted that the council have not claimed that the requests are for information the requester has already seen. In addition, the Commissioner has not noted any repeat requests.

52. The council have said that for some of the requests there is a clear intention to use the request to reopen issues that have already been considered. It has also stated that the many complaints to the council and to a range of outside bodies and organisations have not resulted in any material outcomes against the council.
53. The council provided three examples of the complainants pursuing matters considered closed by the council. One example, relating to use of a corporate credit card, cannot be taken into consideration for the purpose of this decision as it occurred in July 2011, i.e. after the council applied the vexatious exclusion.
54. The second example relates to the complainants raising an objection to the council accounts requiring an investigation by the external auditor. The matter was investigated and a report produced on the issue. The council have argued that the fact that the complainants continue to subject the council to information requests on the matter demonstrates that such requests are obsessive and vexatious. Whilst it is not the Commissioner's role to judge whether the objections were reasonably made, from correspondence provided to the Commissioner, he is aware that the issue of whether the objections were reasonable or not is not clear cut. The Commissioner does not consider that there is strong independent evidence on the issue comparable to that in the cases of *Welsh*¹⁰ and *Coggins*¹¹ referred to in the guidance 'When can a request be considered vexatious or repeated'¹². Additionally, the Commissioner notes that the information requests relating to the objection to the accounts are concerned with the costs of dealing with the accounts (F10/382) and correspondence relating to resolving the objection (F10/383) which is distinct from the investigation into the objection.
55. The third example relates to waste and recycling. The council have said that the complainants obsessively pursued the matter of the number of properties being offered a Brown Bin service and that despite being advised that the number was not available and being given as much assistance and information as possible, the complainants insisted on submitting an information request on the matter. Having examined the

¹⁰ *Welsh v Information Commissioner* EA/2007/0088 (16 April 2008)

¹¹ *Coggins v Information Commissioner* EA/2007/0130 (13 May 2008)

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relevant correspondence on the matter, the Commissioner's view is that this particular argument is weak as the complainants were not provided with a clear answer to their question.

56. As stated in paragraph 52 above, the council said that the many complaints to the council and to a range of outside bodies and organisations have not resulted in any material outcomes against the council. The Commissioner was not provided with evidence of this. Indeed, in relation to the objection made to the Statement of Accounts for year ended 31 March 2009 he is aware, from a letter dated 28 September 2009 from the external auditors to the complainants, that investigations concluded that although the asset values in the accounts do present fairly the values of council owned assets, three recommendations had been made to the council for improving future process for valuing assets and to enhance the disclosure of valuation methodology. Whilst this may not, in the council's opinion, be a material outcome against it, it does demonstrate that the complainants' objections resulted in improvements to the council's processes being considered necessary.
57. Taking into account that there is no one underlying issue, except for the complainants strive for openness and transparency, that there is little evidence that relevant matters have been independently investigated, coupled with the fact that the complainants are not asking for information they have already seen, the Commissioner considers the requests cannot be fairly characterised as obsessive despite the seemingly high volume of requests and correspondence.

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

58. The Commissioner's guidance 'When can a request be considered vexatious or repeated'¹³ states 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.

Relevant factors under this heading could include the volume and frequency of correspondence, the use of hostile, abusive or

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offensive language, an unreasonable fixation on an individual member of staff, or mingling requests with accusations and complaints.”

59. The council have stated that the requests could be expected to harass a reasonable person and could be a cause of unnecessary distress to staff. It has said that hostile and offensive language is sometimes used, that some of that correspondence demonstrates an unreasonable fixation on individual members of staff and that requests are often mingled with accusations and complaints.
60. The council have argued that while individual requests may maintain a veneer of civility, the context of their wider campaign against the council and the tone of their other communications with council officers cannot be ignored. It has stated that the complainants have openly adopted a confrontational and hostile stance to the council, evidenced by the press statements, comments and letters, and their website. The Commissioner does not disagree that the campaign carried out via the press and website appears hostile but acknowledges that the council have also acted in a confrontational manner towards the complainants via the press.
61. The council have also stated that, in their communications with senior officers, the complainants consistently question the competence, honesty and integrity of council officers to a point, and in a manner, that is offensive to those officers. While the Commissioner appreciates that the issue of whether the complainants' communications are offensive to individual officers is subjective to those officers, he has not seen strong evidence in the complainants' correspondence to support this assertion.
62. The Commissioner was supplied with emails to show that despite reasonable efforts being made to accommodate the complainants, communications are often aggressively pursued to the point of hostility, laced with sarcasm and polemic. Having examined the emails, the Commissioner considers that they display frustration rather than hostility.
63. In relation to the complainants displaying an unreasonable fixation on an individual member of staff, the council provided the Commissioner with an example of correspondence regarding whether the number of properties offered a brown bin waste collection service had increased or decreased. The council considered this correspondence to demonstrate that the complainant was persistently hounding and challenging an individual member of staff, construing an unreasonable fixation upon him. The Commissioner appreciates that the correspondence in this matter is protracted and involved senior officers and the chief executive.

He also acknowledges that the officer primarily involved in the correspondence stated;

"I have asked [the complainant] to express to me his specific concerns so that we can seek to address any matters which relate to service performance or customer service. He has not taken up this request. My assumption is therefore that his repeated attacks on me personally are malicious."

However, the Commissioner's view is that the complainant was pursuing a straight answer to his questions. While the Commissioner appreciates the council's view that the complainant was attempting to calculate figures based on an unsound methodology, if the council had been more proactive in providing advice and assistance to the complainant the amount of correspondence would have been reduced. The Commissioner also notes that the complainant was a councillor at the time.

64. The Commissioner requested evidence of the requests often being mingled with accusations or complaints. The council stated that the complainants are unceasing in their criticism and accusations against council officers and are also at pains to copy in the external auditor when emailing such criticism and complaint. The Commissioner notes that the only example supplied which shows the external auditors being copied in took place in June and July 2011. As this occurred after the council's application of the vexatious exclusion it cannot be taken into account for the purpose of this decision.
65. The Commissioner acknowledges that the complainants made serious allegations against the officer involved in the 'brown bin' example at paragraph 63. However, he notes that these accusations were not made as part of a request for information but as part of the dialogue that ensued in response to the request.
66. The council also considers that the communications concurrent with the requests themselves are pertinent to the matter of requests being mingled with accusations and complaints. The Commissioner appreciates that requests F10/382 and F10/383 are related to the complainants' objections to the Statement of Accounts and that requests F11/060 and F11/117 are related to complaints made under the council's complaint procedure. However, the requests themselves do not contain accusations or complaints.
67. In addition, the council has submitted that when conducting enquiries and requests with the council, the complainants often pursue multiple avenues of contact simultaneously. It has said that it is not uncommon for them to open communication with an officer, then open a line of commentary on that communication with another, more senior, officer.

The only evidence the Commissioner has seen of this is an example whereby the contact with a more senior officer was pursued after six weeks of not having received a response.

68. The complainant's requests by themselves do not contain any evidence of deliberate harassment. However, when put in the context of the complainants' history with the council, the Commissioner accepts that they may have the effect of harassing the council or causing distress to staff.

Would complying with the request impose a significant burden?

69. The Commissioner's guidance 'When can a request be considered vexatious or repeated'¹⁴ 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."

70. The council have submitted that complying with the high number of requests would impose a significant burden in terms of expense and distraction.
71. When asked by the Commissioner for an estimation of how long it would take to deal with requests and the costs involved, the council provided the following relevant information:
- The estimated average cost to respond to a request from the complainants is approximately £220 per case (calculated from previous requests from the complainants).
 - The estimated total cost of refused requests in this appeal is approximately £1760.
 - The estimated average time to respond to a request from the complainants is approximately 4.5hrs per case (calculated from previous requests from the complainants).
 - The estimated total time for refused requests in this appeal is approximately 36hrs.

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- The estimates are calculated using examples of interactions undertaken by the council's Information Officer and Web Manager, both of whom are familiar with the cases involved, monitored by a Business Improvement Officer. These estimates should be considered conservative.
72. The council holds that the matter of costs and resources extends beyond the cases being considered in this appeal alone. It stated that requests from the complainants are rarely straightforward; documents and answers sent to them frequently generate further requests for clarification, explanation and justification, and are often made regarding matters in the domain of senior officers. The costs to the council of responding to such requests is therefore much higher than the cost of responding to routine FOI requests (requests for statistics, performance figures etc).
73. The complainants have stated that they are aware that the council is not required to generate information in response to a request and so, to avoid any difficulty, when asking for specific cost information they have always tried to be flexible, asking for the most likely available breakdown "or any other breakdown that was used". They believe that the financial information requested is readily available in the council's financial systems.
74. The guidance mentioned in paragraph 70 states that the wider context of a request is likely to be relevant when considering whether the request imposes a significant burden:
- "You may be able to conclude that responding to a relatively simple request would still impose a significant burden because any response would be very likely to lead to a significant number of further requests and complaints. However, you would need to be able to support this argument with evidence from extensive previous experience with the individual concerned."
75. While the council have not provided specific examples of one request leading to another, the Commissioner has noted that this was the case with request F10/305. The original request was for '...details of all East Herts Council's payments from 1st April 2009 to 30th June 2009'. When the information was provided, the complainants then made the following request; 'The supplier name for the last payment is not shown. Can you please either provide the details or explain why it has been redacted? The description refers to 'election fees'. Could you please explain precisely what these fees were for?' However, in this instance, the Commissioner is of the opinion that the information supplied genuinely raised further questions that the complainants could not have foreseen when making the original request.

76. When considering the council's submissions in relation to the time and cost to deal with the requests, the Commissioner has been mindful that in order to aggregate requests for determining the costs of compliance under section 12 of the FOIA, the requests must relate to similar information. As stated in paragraph 48, the Commissioner's view is that the categories of financial management and/or governance are too wide ranging to link the requests. Therefore, the Commissioner does not accept the council's estimated total cost of dealing with the requests in these cases.
77. The Commissioner has also examined each request in this case and considers that responding to each request individually would not impose a significant burden, particularly if the council has good records management procedures in place.
78. However, as stated above, regard should be had to the wider context and whether responding would divert or distract staff from their usual work. Therefore, it is reasonable to conclude that the main effect of the requests would be to impose a significant burden on the council in terms of expense and distraction.

Is the request designed to cause disruption or annoyance?

79. This factor relates to the requester's intention. The Commissioner has seen no evidence to suggest that the complainants have explicitly stated they wish to cause disruption or annoyance. Instead, the complainants have provided their reasons for making the requests (which will be considered in further detail below). Therefore the Commissioner cannot conclude that this element of vexatiousness is present.

Does the request lack any serious purpose or value?

80. The complainants have stated that the serious purpose and value in their requests, as suitably qualified residents and taxpayers, is to hold their local authority to account, by acting as 'armchair auditors', as suggested by the Secretary of State for Local Government and Communities whose initiatives to make this possible are a major plank in the Government's localism agenda..
81. They have further argued that if the council believes their requests raise issues relating to financial probity and/or governance it is even more important - and in the public interest - that they are answered. They have added that a prime purpose of the FOIA is to bring openness and transparency on such matters.
82. The complainants also highlighted the individual serious purpose and value of their requests. The following are examples of these:

- F10/378 - This data has been collated for some time as an aid to scrutiny. The Council supplied previous months' data without any problem. This request is not designed to cause disruption or annoyance, but to identify trends in the waste figures.
 - F10/382 - This request is designed to identify whether public statements about us, made by officers in council papers and by senior councillors to the press, are supported by the facts; it is not designed to cause disruption or annoyance, but to give us the opportunity to respond and correct misinformation.
 - F11/069 - The Standards Committee considers important issues of probity and the conduct of elected officials in charge of public funds. It is in the public interest for the selection process for the Standards committee to be open and transparent.
 - F11/117 There is reason to believe that the Standards Committee may have received poor advice and this correspondence may shed some light on the matter.
83. The Commissioner accepts that there is serious purpose and value in the requests. His guidance 'When can a request be considered vexatious or repeated'¹⁵ states;
- "...if a request does have a serious purpose or value, this may be enough to prevent it being vexatious, even if it imposes a significant burden and is harassing or distressing your staff. If the request forms part of a wider campaign or pattern of requests, the serious and proper purpose must justify both the request itself and the lengths to which the campaign or pattern of behaviour has been taken...The question of whether a serious and proper purpose can continue to justify an ongoing campaign or series of requests will overlap with the question of whether the latest request can fairly be seen as obsessive. If a request is obsessive (eg if the issue has already been fully considered and debated with the applicant) then it is unlikely that there can be any continuing justification for that request."
84. The council have stated that the purpose or value of the requests do not justify both the requests and the lengths to which the campaign or pattern of behaviour has been taken. It has said that it appreciates that

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http://www.ico.gov.uk/for_organisations/freedom_of_information/information_request/reasons_to_refuse.aspx

the complainants may consider that they are undertaking what some may regard as a public service in challenging the council in various matters, but cannot agree that the protracted campaign they have subjected the council to is justified on these grounds due to the disproportionate demands their behaviour places on council's finite resources.

85. The Commissioner acknowledges that the council has finite resources but considers that the serious and proper purpose in this case justifies the requests made. In coming to this opinion, the Commissioner has taken into consideration the decision that the requests are not obsessive as they relate to a wide range of issues that have not been independently adjudicated on.

Conclusion on vexatiousness

86. The Commissioner considers that the requests cannot be fairly characterised as obsessive, are not designed to cause disruption or annoyance and have a serious purpose and value. He accepts that the requests impose a significant burden in terms of expense and distraction and may harass the authority and cause distress. The Commissioner considers that this is a finely balanced case but taking into account all the circumstances, is satisfied that the requests are not vexatious.

Is the information environmental?

87. Regulation 2(1) of the EIR defines 'environmental information' as having the same meaning as in Article 2(1) of Council Directive 2003/4/EC:

'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 the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c)'.

88. In the Commissioner's view, the use of the word 'on' indicates a wide application and will extend to any information about, concerning, or relating to the various definitions of environmental information.
89. Although the Commissioner has not seen the requested information in these cases, he considers it likely that some of the information falling within requests F11/035, F11/061, F11/095, F11/132 and F11/149 would constitute environmental information by virtue of Regulation 2(1)(c). The Commissioner considers that the information in request F10/378 constitutes environmental information by virtue of Regulation 2(1)(b).
90. In four of the six cases above the council agree that the appropriate legislation is the EIR. With the regards to requests F11/061 and F11/149 the council do not believe the situation is as clear cut and that both the FOIA and the EIR apply. Where the EIR apply, the council has applied the manifestly unreasonable exception at regulation 12(4)(b).

Regulation 12(4)(b) – the request for information is manifestly unreasonable

91. 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.
92. 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. Therefore, as the Commissioner has judged that the requests are not vexatious under section 14, he is also of the

opinion that the requests are not manifestly unreasonable under the EIR.

Other matters

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

Internal review

94. Paragraph 39 of the Code of Practice issued under section 45 of the Act (the 'Code') recommends that complaints procedures should:

"...provide a fair and thorough review of handling issues and of decisions taken pursuant to the Act, including decisions taken about where the public interest lies in respect of exempt information. It should enable a fresh decision to be taken on a reconsideration of all the factors relevant to the issue."

95. Paragraph 40 of the Code states that in carrying out reviews:

"The public authority should in any event undertake a full re-evaluation of the case, taking into account the matters raised by the investigation of the complaint."

96. As he has made clear in his published guidance on internal reviews, the Commissioner considers that internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner's view of a reasonable time for completing an internal review is 20 working days from the date of the request for review. In this case the Commissioner notes that in relation to request F11/035 the public authority took over two months to provide an internal review. The public authority should ensure that internal reviews are carried out promptly in future.

Right of appeal

97. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

98. 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.

99. 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

Annex A

DATE OF REQUEST	MADE BY	REQUEST (INC. COUNCIL REFERENCE)	INITIAL RESPONSE	REVIEW RESPONSE
26.11.10	[complainant]	<p>F10/378 Can you please provide me with the following information under the provisions of the Freedom of Information Act:</p> <p>Waste and recycling tonnage figures by category for the year to date ending October 2010 by the following categories:</p> <ul style="list-style-type: none"> • Kerbside paper • Glass • Plastic bottles/mixed cans • Garden, food waste & card • Other Recycling (Glass, paper banks & other) • Collected Waste • Street Sweepings 	02.12.10 s14	26.01.11 s14
29.11.10	[complainant]	<p>F10/382 Under the provisions of the Freedom of Information Act could you please provide me with any and all details of the costs charged to East Herts council by Grant Thornton for dealing with an objection to the 2009/10 accounts?</p> <p>Could you provide a breakdown of these costs including, but not limited to, legal advice, the district auditor's, [named individual], time, the time of other Grant Thornton staff, other costs and VAT or any other</p>	02.12.10 s14	26.01.11 s14

		breakdown the Council holds?		
29.11.10	[complainant]	F10/383 Under the provisions of the Freedom of Information Act and the Data Protection Act can you please provide me with any and all correspondence between 1st August 2010 and 29 th November 2010 between any officer of East Herts Council, including but not limited to [named individual], [named individual], [named individual], [named individual], and any employees of Grant Thornton, including but not limited to [named individual], [named individual] and [named individual], relating to resolving the objection to the 2009/10 accounts	02.12.10 s14	26.01.11 s14
29.11.10	[complainant]	F10/385 Under the provision of the Freedom of Information Act could you provide me with any and all details provide to [named individual] or his agent with regards to the cost of the by-election. Could also provide me with a detail breakdown of the estimate, including but not limited to the cost of room hire for polling stations and the count, casual staff for polling day, postage, printing and officer time and the basis on which the cost of the officer time was calculated.	02.12.10 s14	26.01.11 s14
30.11.10	[complainant]	F10/305 Thank you for the June details. The supplier name for the last payment is not shown. Can you please either provide the details or explain why it has been redacted? The description refers to "election fees". Could you please explain precisely what these	01&02.12.10 Council regard the fees as akin to employees pay. It would	09.12.10 s40

		fees were for?	be a clear breach of Data Protection to detail each individual name and payment.	
23.01.10	[complainant]	F11/035 The Council spending disclosure report shows a payment of £240,807.8 was made to SLM on 5th January 2011 relating to "Presdales - Replace Pavilion" Under the provision of the Freedom of Information Act could you please tell me when this work was put out to tender, who or which decision making body approved the <u>revised scope of work to be included in the tender document</u> , how many companies responded to the tender and when and who made the decision to give the contract to SLM?	09.02.11 Information relating to subcontracting work for SLM provided. Request related to primary contract between council and SLM.	26.04.11 s14
07.02.11	[complainant]	F11/061 Under the provisions of the Freedom of Information Act, could you please provide me with the records of any and all written approvals by the Director of Internal Services since Feb 2009 which have resulted in the awarding of contracts for good and services of value over £5,000 to suppliers without obtaining	23.03.11 s14	31.03.11 s14

		competitive tenders.		
07.02.11	[complainant]	F11/060 Under the Freedom of Information Act could you please provide me with any and all correspondence relating to my original complaints, made on 10th August 2010 against the Chief Executive and the subsequent investigation, including but not limited to correspondence between [named individual], [named individual], [named individual] of Eversheds, [named individual] and [named individual].	23.03.11 s14	31.03.11 s14
11.02.11	[complainant]	F11/069 I understand that the four District Councillors on the Standards Committee are appointed by Council each May. Can you please tell me what the selection process is for the other members ie the four independent Members, one Town Council Member and two Parish Council members? In particular can you please tell me 1. How are candidates identified? 2. Is any process used to assess the suitability of candidates and, if so, what does this entail? 3. If more than the required number of suitable candidates are identified, who decides which of them should be appointed, and on what basis?	23.03.11 s14	31.03.11 s14
15.02.11	[complainant]	F11/074 Under the provisions of the Freedom of Information Act could you please tell me the total gross advertising income for each of the last four editions of Link magazine? Could you also tell me the total payments made to the Link advertising executive for each of these editions and when the executive was	23.03.11 s14	31.03.11 s14

		recruited?		
23.02.11	[complainant]	F11/095 Under the provisions of the Freedom of Information Act can you please provide me with the dates of and any and all correspondence, agendas, minutes and notes relating to any and all meetings since March 2009 between [named individual], or any East Herts Planning Officer, and the applicant for the proposed Old River Lane, Bishops Stortford, site development (also known as the Causeway site) or their agents or representatives, including but not limited to [named individual], [named individual], [named individual], [named individual], [named individual], [named individual], and [named individual]?	23.03.11 s14	31.03.11 s14
07.03.11	[complainant]	F11/117 Under the provisions of the Freedom of Information Act and the Data Protection Act can you please provide me with any and all correspondence since 20 th December 2010 to date between [named individual] and [named individual] relating to Code of Conduct Complaint EHDC/01/2011	23.03.11 s14	31.03.11 s14
10.03.11	[complainant]	F11/132 Parking bays where electric / hybrid cars can be recharged were recently installed at Gascoyne Way car park in Hertford. Under the provision of the Freedom of Information Act can you please provide me with any and all information the Council has collected on the occupancy of these bays for the purpose of	23.03.11 s14	31.03.11 s14

		recharging electric / hybrid cars since the car park was refurbished, including, but not limited to, total hours the bays were occupied for the purposes of recharging vehicles, the total amount (kilowatt-hours) of electricity consumed by recharging activities and the cost of the electricity consumed? If no data has been collected could you please confirm such. Could you also please provide details of the full cost of purchasing and installing the recharging equipment?		
23.03.11	[complainant]	F11/149 When studying the weekly payments from East Herts Council I noticed regular sums being paid the Nuffield Health for parking. I understand this is a reimbursement for people who use the centre and park in East Herts car parks nearby. What is the agreement which requires East Herts Council to make payments to Nuffield Health in relation to the reimbursement of parking charges, why was it put in place and when was it made?	14.04.11 s14	28.04.11 s14
04.05.11	[complainant]	F11/215 Can you please provide me with a full description of what was provided in exchange for the following payments, who attended the events and what was the purpose? <ul style="list-style-type: none"> • [named company] 09-10 115.41 06-Jan-10 Chief Executive & Corporate Support • [named company] 09-10 115.42 06-Jan-10 	26.05.11 s14 & no requirement to conduct review.	

		<p>Corporate and Democratic Core</p> <ul style="list-style-type: none"> • [named company] 100.40 24-Jun-09 Corporate and Democratic Core Members Refreshments • Rhodes Birthplace trust 82.27 30-Jun-09 Corporate and Democratic Core Members Expenses • UH Hospitality Ltd 2100.00 03 Nov 09 Corporate and Democratic Core Members Expenses 		
28.05.11	[complainant]	<p>F11/233 It was recently announced that councillors will be eligible to claim a new allowance of £35 per month to cover telephone line rental, call costs, broadband provision, printer hardware & consumables. In relation to members allowance schemes the law says that "Before an authority ... amends a scheme, the authority shall have regard to the recommendations made in relation to it by an independent remuneration panel." Under the provision of the Freedom of Information Act could you please tell me which body (e.g. Council, The Executive, the Corporate management team,....) or person (e.g. The Leader, The Executive member for Finance, the Chief Executive, the Director for ..., ...) made the decision to pay this allowance, when the decision was made, under what authority or powers and where the decision is recorded? Could you also provide me with any and all of the recommendations made by the independent remuneration panel in relation to this new IT</p>	02.06.11 s14 & no requirement to conduct review.	

Reference: FS50364930



		allowance?		
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