

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

Decision Notice

Date: 27 July 2011

Public Authority: Cumbria County Council
Address: The Courts
English Street
Carlisle
Cumbria
CA3 8NA

Summary

On 8 September 2010 the complainant requested information from Cumbria County Council ('the council'). Following the Commissioner's Decision Notice of 31 March 2011, the council stated that the information had been provided on a repeated basis. The Commissioner investigated and found that the information was environmental and the council was entitled to refuse to disclose the information under the exception at regulation 12(4)(b) of the Environmental Information Regulations in that the request was manifestly unreasonable and the public interest in maintaining the exception outweighs the public interest in disclosure. The council is not required to take any further steps in respect of this complaint.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.
2. 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

3. On the 8 September 2010 the complainant wrote to the public authority requesting the following information:
 - 1 "In August 2000 H & H Borderway Motor Auctions Ltd offered for sale a Jaguar Car Registration No [a specific car registration number] for [a named individual], County Court (29 AUG 2000). Hence as the instructions came from Cumbria County Council and the actions were at the public's expense, can you please identify the valid lawful authority that was valid to commit the actions and use the name of the County Court as the seller of the goods."
 - 2 "When replying please identify Cumbria County Councils [sic] as highways authority Lawfull [sic] authority to prohibit my personal freedom [sic] of passage along any public highway that is a public right of way that contains [sic] Traffic calming humps -cushions & table top humps to such a height and design that prevent the passage of the Standard Avon registration No [a specific car registration number]..."
4. The public authority wrote to the complainant on 17 September 2010 stating that he would receive a reply to the request for information regarding the alleged sale of the Jaguar by 6 October 2010. This letter did not mention the second request.
5. On 24 September 2010 the complainant wrote to the public authority to point out that its letter of 17 September 2010 did not acknowledge the second request.
6. The complainant wrote to the public authority again on the 8 October 2010 to chase up a response to both his requests. He stated that it is his legal and human right to see a copy of the original valid writ or warrant of execution in relation to the sale of the Jaguar and a copy of Cumbria County Council's lawful authority to construct traffic calming measures in relation to the second request.
7. On 20 October 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled in that he had received an acknowledgement letter but no further response.

8. The Commissioner investigated the complaint and issued a Decision Notice on 31 March 2011 requiring the council to identify whether the information requested was environmental and to respond to the complainant in accordance with either section 1(1) of the Act, or regulation 5(1) if the information is environmental, or issue a valid refusal notice.
9. On the following dates the complainant wrote to the council stating that it continues to fail to reply to his requests and restating his questions:

4 April 2011, 14 April 2011, 5 May 2011, 16 May 2011, 18 May 2011, 23 May 2011, 26 May 2011.
10. The complainant also wrote to the Commissioner on the issue on 4 April 2011, 5 May 2011, 16 May 2011, 17 May 2011, 19 May 2011, 23 May 2011, 26 May 2011.
11. The complainant also called the Commissioner on numerous occasions between the issuing of the Decision Notice and the council's response. The Commissioner informed the complainant that, if having received the council's response to the Decision Notice and still remaining dissatisfied, the Commissioner could specifically investigate the council's response to that Decision Notice as a separate complaint.
12. On 18 May 2011 the council provided the complainant with a response to Decision Notice FS50356566. It stated the following:

"As stipulated by the Commissioner (Step 20, page 4) I can confirm that that the information covered by your request submitted on 8 September 2010 (our reference: FOI 2010-484) is not environmental and is therefore not covered by the Environmental Information Regulations (EIRs) 2004. It is however caught by the Freedom of Information Act (FOIA) 2000. The Council acknowledges that in this instance it has failed to provide you with a response to Part 2 of your request and I apologise for any inconvenience this may have caused you.

However, the purpose of this letter is to prove beyond all reasonable doubt that the Council has provided you with an answer to this and other related questions in the past."
13. The council's letter of 18 May 2011 then explains that a lengthy review of the papers relating to the complainants numerous requests to the council has been carried out. The letter provides a case history including actions the complainant has brought against the council, a list of information requests submitted and associated responses from the council, and complaints made to the Commissioner.

The Investigation

Scope of the case

14. On 27 May 2011 the complainant contacted the Commissioner to complain about the council's response to Decision Notice FS50356566. The complainant stated that the council's response does not make reference to the questions in hand hence the contents must be disregarded.
15. During the course of the Commissioner's previous investigation (FS50356566), it was identified that the request for the lawful authority in relation to the Jaguar was a request for personal data of the complainant and should have been dealt with as subject access request under the Data Protection Act 1998. The first part of the request is therefore outside the scope of this Decision Notice and is dealt with under a separate data protection case.

Analysis

Is the information environmental?

16. 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)'.

17. 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.
18. The requested information consists of legislation, namely the Highways (Road Humps) Regulations 1999 and the Highways (Traffic Calming) Regulations 1999, which are measures affecting or likely to affect the elements and factors referred to in regulation 2(1)(a) and 2(1)(b) above. The Commissioner is therefore satisfied that this constitutes environmental information by virtue of Regulation 2(1)(c).

Substantive Procedural Matters

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

19. The council have not specifically cited regulation 12(4)(b) in its response of 18 May 2011 but have stated that the request was not answered simply because, over time, the council has exhausted the manner in which the information can be communicated to the complainant who has been given the information on a repeated basis.
20. The Commissioner is aware that the council have cited sections 14(1) and 14(2) to previous requests for the same information and believes it is appropriate for the investigation to focus on regulation 12(4)(b) given the council's statement in the paragraph above. The Commissioner also believes it is appropriate to draw on submissions made by the parties during the investigation of a previous complaint (reference FS50145244), as well as submissions in this case, as the previous case involved the same request for information and the council's application of section 14(1).
21. 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.

22. 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 may well 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). The Commissioner is also mindful of the presumption in favour of disclosure at regulation 12(2).
23. The Commissioner issued revised Awareness Guidance entitled 'Vexatious or repeated requests' in December 2008 as a tool to assist in the consideration of when a request can be treated as vexatious. The guidance sets out the following key questions to consider:
 - 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?
 - Is the request designed to cause disruption or annoyance?
 - Does the request lack any serious purpose or value?
24. The guidance indicates that an affirmative response to all of the questions is not necessary for a request to be deemed vexatious. However it states that to judge a request as vexatious persuasive arguments should be made under more than one heading.

Context and History

25. The council have indicated that the context and history in this case had an important bearing on its decision. It explained that the complainant had submitted numerous requests for the 'lawful authority' the council uses for the construction of humps, cushions and tables and believes that it would be unfair to simply consider how the request of 8 September 2010 has been handled in isolation.
26. 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.

27. The Commissioner has therefore deemed it appropriate to take into consideration the following chronology, provided by the council in it's letter of 18 May 2011, to demonstrate that they had more than adequately answered the complainants questions on the issue in the past:

- “On 29 April 1989, [named individual] provided details that the lawful authority was included within the *Highways Act 1980* and the *Highways (Road Humps) Regulations*;
- On 10 November 2005; 20 February 2006 and 28 February 2006 the Head of Legal Services explained that the lawful authority permitting construction of road humps, cushions, etc. are contained in the *Highways Act 1980*, the *Highways (Road Humps) Regulations 1990* and subsequently the *Highways(Road Humps) Regulations 1999*;
- On 02 August 2006 the Head of Legal Services wrote to you and referred you to the previous occasions (noted above) upon which the Council had provided the information requested relating to lawful authority;
- On 20 September 2006 the Head of Legal Services again responded to you stating the Council had answered your query on a number of occasions and reiterated for the “avoidance of doubt” that lawful authority was contained within either the *Highways (Road Humps) Regulations 1999* or the *Highways (Traffic Calming) Regulations 1999*; depending on the sort of construction referred to;
- On 12 December 2006 the Council responded to your request for copies of the lawful authority; by explaining that the *Highways (Road Humps) Regulations* and *Highways (Traffic Calming) Regulations* were available for purchase from the Department of Transport. Contact details were provided;
- On 14 February 2007 The Council responded to another request for access to copies of Highways Regulations. Again the Council wrote to you and told you that copies of the *Highways (Road Humps) Regulations*

and *Highways (Traffic Calming) Regulations* were available for purchase from the Department for Transport;

- On 25 May 2007 The Council again responded to you stating that the road table on Lowther Street/Victoria Place, Carlisle was constructed in accordance with the *Highways (Road Humps) Regulations 1999*;
 - On 23 October 2007 the ICO concluded that this information had been provided to you following their own investigation into your earlier complaint (your ref: FS50145244). The relevant legislation has not changed since 1999 so therefore the information provided to you previously is still valid;
 - Whilst the Council was recruiting a new Chief Executive to replace Peter Stybelski (August 2009) you wrote again requesting "*.. copy of CCC as highways authority lawful authority to obstruct public rights of way with deliberate obstructions with a height exceeding 65mm.....lawful authority by which CCC denies my personal use and enjoyment of Highway....identify any lawful authority that CCC may have to prohibit me from attempting to earn income from use and enjoyment of this vehicle for weddings...*" The Council responded by restating that these issues had been answered by Brian Walker, Head of Legal Services on 10 November 2005 (ref BW/JEC 3.38) and Richard Claydon, Assistant Head of Legal Services on 4 June 2007 (ref RHC/SC) made in response to your letter of 16 May 2007 to the Chairman of the County Council. Copies of these letters are attached for information;
 - On 16 March 2010 you once again contacted the Council requesting "*...please provide CCC as Highways Authority to prohibit my personal free passage along any highway which may contain traffic calming features without hindrance or damage when legally driving the Standard Avon special registration no.....*" The Council refused to answer your request in accordance with FOIA s.14(2)".
28. The Commissioner is also of the opinion that it is the request rather than the requester which must be vexatious and therefore, to arrive at a balanced opinion, consideration has been given to the five questions stated at paragraph 23.

Could the request fairly be seen as obsessive?

29. 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”.

30. In addition to the chronology provided by the council (paragraph 27), it also identified 18 information requests which they had dealt with as formal requests under the Act relating to the following themes:

- “notice of the lawful authority that the Council [as Highways Authority] uses to legally construct road humps, cushions, tables and similar constructions;
- road/street names throughout Cumbria that have humps, cushions tables etc constructed on them to a height exceeding 65mm;
- alternative routes avoiding humps, cushions, tables etc for safe passage of vintage car (Standard Avon) to all local amenities.”

31. The Commissioner notes that 7 of these requests were identical or substantially similar to the request made on the 8th September 2010. The council provided the requested information on 5 of these occasions (council’s references – FOI2006–493, FOI2006–560, FOI2007-019, FOI2009-332 & FOI2010-165) and cited section 14(2) on 3 occasions (FOI2006-560, FOI2007-105 & FOI2010-155). The information was last provided to the complainant on 26 March 2010.

32. 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’.

33. The council provided evidence that the complainant’s issue had already been dealt with in six legal actions. The complainant succeeded in the first action but the subsequent claims were dismissed or struck out by the court. The council explained that the claims have been litigated and subject to judicial determination that those claims are without merit.

34. The council also submitted that the complainant has made five complaints to the Local Government Ombudsman on the subject of speed humps and traffic calming features and alleged discrimination against the complainant, and that in each case the Local Government Ombudsman either decided not to pursue the complaint since it was already the subject of court proceedings, or concluded that there was no evidence of maladministration by the council.

35. The fact that the complainant persists with the issue despite being in possession of independent evidence that the council's stated position is valid is characteristic of an obsession as per the Information Tribunal in the cases of *Welsh v Information Commissioner EA/2007/008* (16 April 2008) and *Coggins v Information Commissioner EA/2007/0130* (13 May 2008).
36. From the correspondence on this case it is apparent that the complainant will not be satisfied until the council respond to his request stating that it didn't have the required lawful authority. The complainant is of the opinion that he has been discriminated against by the council causing irreparable damage to his health and leaving him with a unique and irreplaceable vintage car that cannot be driven over certain road humps. He believes he is entitled to compensation from the council and it appears that he will not be happy until the council provide him with an answer that allows him to claim compensation. The Commissioner has taken this into account when considering whether the request can fairly be seen as obsessive.
37. In assessing whether the request can fairly be seen as obsessive, the Commissioner has taken into consideration that the information requested, namely the lawful authority, is not the type of information that is likely to change or be updated often. It is noted that the relevant legislation has not changed since 1999 so therefore the information last provided to the complainant in March 2010 is still valid. In addition, the Commissioner has considered that even if the relevant legislation were to change in the future, as the request relates to actions already taken by the council, i.e. the installation of traffic calming measures, the validity of the information provided would not change.
38. Taking into account that the underlying issues have already been independently adjudicated on, that previous FOI requests on the same or similar issues have been answered and that the information is not likely to change, coupled with the complainant's apparent infinite lack of satisfaction with those responses, the Commissioner accepts that they can fairly be characterised as obsessive.

Is the request harassing the authority or causing distress?

39. 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.

Relevant factors under this heading could include the volume and frequency of correspondence, the use of hostile, abusive or offensive language, an unreasonable fixation on an individual member of staff, or mingling requests with accusations and complaints”.

40. The complainant’s request by itself does not contain any evidence of deliberate harassment. However, when put into the context of his long-standing dispute with the council and the correspondence connected to that, coupled with the fact that responding to the request would not furnish the complainant with information that has not previously been supplied to him, the request can be said to have the effect of harassing the council.
41. This is supported by the Information Tribunal’s decision in the case of *Ahilathirunayagam v Information Commissioner and London Metropolitan University EA/2006/0070* (20 June 2007) where the Tribunal found the request to be vexatious by taking into account the following matters:
 - “...(ii) The fact that several of the questions purported to seek information which the Appellant clearly already possessed and the detailed content of which had previously been debated with the University ...
 - ...(iv) The background history between the Appellant and the University...and the fact that the request, viewed as a whole, appeared to us to be intended simply to reopen issues which had been disputed several times before...” (para 32)
42. The council have stated that the complainants letters are often a confusing combination of requests for information, comment and opinion and that he writes to the Chief Executive, Head of Legal Services, Assistant Head of Legal Services, Chairman of the council, Group Leaders, plus other councillors and officers, despite the council informing him that the contact for his requests should always be the Information Team.
43. During the course of the investigation, the Commissioner has also noted that the complainant’s requests for information are often mixed in with other complaints and accusations and that his correspondence includes allegations against individual council officers.
44. The Commissioner is satisfied that the request in its context did have the effect of harassing the council. In coming to this conclusion, the

Commissioner has considered the Tribunal decision in the case of Gowers¹ and the comments in paragraph 53 and 54 of that decision:

"...what we do find is that the Appellant often expressed his dissatisfaction with the CCU in a way that would likely have been seen by any reasonable recipient as hostile, provocative and often personal...and amounting to a determined and relentless campaign to obtain any information which he could then use to discredit them....we find that taken in their context, the requests are likely to have been very upsetting to the CCU's staff and that they...are likely to have felt deliberately targeted and victimised...."

Would complying with the request impose a significant burden?

45. 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."

46. The Council explained that the complainant had been in regular correspondence with it over a number of years regarding various issues and provided relevant evidence to demonstrate that. The available evidence shows that virtually all responses provided by the council were followed by a letter from the complainant, often sent the day following the receipt of the response, and expressing dissatisfaction with it and/or making a further request for information. The complainant addressed his letters to different councillors and officers of the council, imposing a significant burden, especially given the length and content of some of the correspondence. It also submitted that much time and effort had been devoted to providing the complainant with the best possible answer to his requests.
47. The Council further explained that the complainant's letters were rather difficult to deal with, as sometimes they contained a confusing mixture of comment and complaint and were accompanied by photographs and other materials, so it took it a lot of time and effort to identify which parts were actually requests for information that had to be addressed.
48. The Commissioner notes the Tribunal's comments in the DBERR case², based on the presumption in favour of disclosure provided in the EIR at regulation 12(2):

¹ Gowers v Information Commission and London Borough of Camden EA/2007/0114

“public authorities may be required to accept a greater burden in providing environmental information than other information” (para 39).

49. However, the Commissioner believes that, even though the complainant may not have explicitly intended to cause inconvenience or expense, and that it would not create a significant burden to respond to the request of the 8 September 2010 in isolation, it is reasonable to conclude that the main effect of the request 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?

50. This factor relates to the requester's intention and the Commissioner has seen no evidence to suggest that the complainant has explicitly stated that he wants to cause disruption or annoyance in relation to this request. From the correspondence on the case, the Commissioner considers that it is more likely that the requests are designed to elicit information that the complainant thinks will help him, rather than being designed to cause disruption or annoyance, therefore he cannot conclude that this element of vexatiousness is present.

Does the request lack any serious purpose or value?

51. The Commissioner's Awareness Guidance 22 relating to vexatious requests states that;

“It is not appropriate to use lack of value as an argument simply because you cannot imagine what the value might be. You must demonstrate that a request has no purpose or value, rather than simply suggest that because the requester did not provide a reason there cannot be one.”

52. It is clear from the correspondence on the case that the complainant is genuinely trying to pursue an issue that is of importance to him. Therefore, the Commissioner is not of the opinion that the request has no serious purpose or value. However, he does accept that the value of the requests is diminished by the fact that the underlying issues have been already been independently investigated and adjudicated upon and that the council have previously responded to his request.
53. The Commissioner is however of the opinion that any serious value or purpose in this request is not enough to prevent it being vexatious.

² BERR v Information Commissioner [EA/2008/0096]

Conclusion

54. The Commissioner considers that the request can be fairly characterised as obsessive, harasses the authority and causes distress to staff and imposes a significant burden in terms of expense and distraction. The Commissioner does not find that the request is designed to cause disruption or annoyance or lack any serious purpose or value. However, the Commissioner is satisfied that on balance, taking into account the context and history, the request is manifestly unreasonable.

The public interest test

55. As the Commissioner is satisfied that the request is manifestly unreasonable, he has gone on to consider whether the public interest in maintaining the exception outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosing the requested information

56. The Commissioner recognises the generic public interest argument that disclosure of information increases transparency and accountability and notes regulation 12(2) which states:

‘A public authority shall apply a presumption in favour of disclosure.’

57. The complainant has argued that the council have misused public funds for many years by illegally constructing traffic calming measures suggesting that it is in the public interest to disclose the requested information.

Public interest arguments in favour of maintaining the exemption

58. The Commissioner acknowledges that the council has provided the complainant with the requested information over a number of years and that it has acted in the public interest in this regard. He is of the opinion that to divert the council's resources from its core public functions in order to provide information that has already been supplied would not be in the public interest.
59. The Commissioner is of the view that there will sometimes be a difference between the serious purpose and value of a request to an individual requester (which is what should be taken into account when engaging the exception) and the public interest in disclosure to the world at large (which is what should be taken into account in the public interest test). In this case, the Commissioner is also of the opinion that the complainants issue is not a matter of real importance to anyone other than him and any supporters he may have. It is not therefore in

the public interest to require the council to divert it's resources by continuing to provide information already supplied.

Balance of the public interest arguments

60. The Commissioner accepts that there are compelling arguments in favour of maintaining this exception in this particular case due to the public interest in protecting the integrity of the EIR and ensuring that they are used responsibly. Although public authorities are encouraged to act in a transparent and accountable way which benefits the public as a whole, it is not the intention of the EIR to require public authorities to repeatedly supply the same information.
61. The Commissioner is strongly of the view that public authorities should be able to concentrate their resources on dealing with legitimate requests rather than being distracted by requests where in the circumstances the wider public interest would not be served by responding to the request.
62. The Commissioner also considers that there is a strong public interest in not putting an unreasonable burden upon the council in pursuance of a matter that has already been independently heard and adjudicated upon.
63. Considering the volume and nature of the requests and correspondence to the council, the Commissioner has concluded that it is unlikely that any response to this request would satisfy the complainant. This factor lessens any public interest in requiring the council to respond to this request.
64. In view of the above, it is the Commissioner's view that in all the circumstances of this case, the public interest in maintaining the exception outweighs the public interest in disclosing the information. Therefore, he considers that the request is manifestly unreasonable and finds that the council acting appropriately in refusing the request.

Procedural requirements

Regulation 14 - Refusal to disclose information

65. The Commissioner finds that the Council should have considered the request under the EIR rather than the Act. In failing to deal with the request under the correct access regime, and provide a refusal notice citing regulation 12(4)(b) the Commissioner finds that the Council was in breach of Regulation 14(3) of the EIR.

The Decision

66. The Commissioner's decision is that the public authority correctly withheld the information under the exception at regulation 12(4)(b).
67. However, the Commissioner has noted there was a procedural breach in that by providing a refusal notice that referred to the Act rather than the exceptions under the EIR, the council breached regulation 14(3).

Steps Required

68. The Commissioner requires no steps to be taken.

Right of Appeal

69. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

70. 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.

71. 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 27th day of July 2011

Signed

**Lisa Adshead
Group Manager
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Legal Annex

Environmental Information Regulations 2004

Regulation 2 - Interpretation

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;

Regulation 12 – Exceptions to the duty to disclose environmental information

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;
- (c) the request for information is formulated in too general a manner and the public authority has complied with regulation 9;
- (d) the request relates to material which is still in course of completion, to unfinished documents or to incomplete data; or
- (e) the request involves the disclosure of internal communications.

Regulation 14 - Refusal to disclose information

Regulation 14(3)

The refusal shall specify the reasons not to disclose the information requested, including –

- (f) any exception relied on under regulations 12(4), 12(5) or 13; and

(g) 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).

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.”