

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

Decision notice

Date: 18 April 2012

Public Authority: Babergh District Council
Address: Council Offices
Corks Lane
Hadleigh
Ipswich
IP7 6SJ

Decision (including any steps ordered)

1. The complainant requested information from Babergh District Council ("the council") regarding Nayland Airfield. The council refused to comply with the request on the basis that it was manifestly unreasonable under regulation 12(4)(b) of the Environmental Information Regulations 2004 ("the EIR") and the public interest favoured maintaining the exception.
2. The Commissioner's decision is that the council correctly relied on regulation 12(4)(b) and that the public interest favoured maintaining the exception in this case.
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 3 July 2011, the complainant requested information from the council in the following terms:

"I wish to apply for information under the environmental information regulations 2004.

I refer to your reference B04/254/ENF – planning inspectorate ref APP/D3505/C/05C2001482 and specifically a proof of evidence from [name]

Under section 2 of [name] statement entitled 'enclosure' there is a list and I specifically refer to subject matter under the reference 'L' which is a 'letter dated 27th February 1995 addressed by [name] on behalf of the Solicitor to the council to [name].

The first paragraph of [name]'s letter to [name] is as follows. 'I refer to previous correspondence regarding the eastern runway, and am writing to let you know our conclusion in that regard'.

The information I seek is copies of that correspondence (which may consist of more than one letter)".

5. The council replied on 1 August 2011. It said that it considered that the request was manifestly unreasonable under regulation 12(4)(b) of the EIR.
6. The complainant replied on 19 September 2011 and asked the council to conduct an internal review.
7. The council replied on 1 November 2011. It said that it wished to maintain its position.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He specifically asked the Commissioner to consider whether the council had correctly refused to comply with the request using regulation 12(4)(b) of the EIR.

Background

9. The council explained to the Commissioner that there is a long planning history to Nayland Airfield. The site is in an area of outstanding natural beauty.
10. There are two airstrips at the airfield; one known as the main airstrip and the other the eastern airstrip. The main airstrip was granted planning permission in 1985 (following an appeal and decision of the Secretary of State) subject to various conditions. In respect of the eastern airstrip, on two occasions the landowner has applied to the council for a certificate of lawfulness for the taking off and landing of aircraft on an eastern airstrip. Those applications (made in 1998 and 2004) were refused by the council on the basis that the unauthorised use of the eastern airstrip had not been in continuous use for the requisite 10 year period preceding the applications.

11. The council issued an enforcement notice under section 172 of the Town and Country Planning Act 1990 on 24 January 2005 to prevent the unauthorised use of the airstrip. The landowner appealed against the notice. A planning inquiry took place in November 2006 and the enforcement notice was upheld. Following complaints, it became apparent that the enforcement notice was not being complied with. This prompted the council to commence injunction proceedings in the High Court. It was granted an interim injunction to stop the unlawful flying activities. A final injunction was granted by the High Court on 22 April 2008 by way of a consent order. The council has received reports that flying has continued in breach of the injunction however it has not taken any further action.

Reasons for decision

Is the information environmental?

12. There is no dispute between the parties that the appropriate legislation is the EIR. The Commissioner accepts that this is correct because the information relates to an airfield and planning matters connected to the airfield. This brings the request within the scope of regulation 2(1)(c) of the EIR because the request relates to activities affecting or likely to affect at least one of the elements and factors of the environment listed in regulation 2.

Regulation 12(4)(b) – Manifestly unreasonable

13. Regulation 12(4)(b) of the EIR states:

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

(b) the request for information is manifestly unreasonable”

14. The Commissioner's view is that it is permissible to refuse requests that would be vexatious under the FOIA under regulation 12(4)(b) of the EIR.
15. Guidance on the Commissioner's approach to vexatious requests can be found on the Commissioner's website and for ease of reference, at the following links:

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

<http://www.ico.gov.uk/foikb/FOIPolicySectionsRegs.htm>

16. As explained in the guidance, the Commissioner's general approach is to consider the argument and evidence that the public authority is able to provide in response to 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?
17. It will not be necessary for all of the above criteria to apply but in general, the more that apply, the stronger the case for a vexatious or manifestly unreasonable request will be. The Commissioner is able to take into account the history and context of the request when determining whether a request is vexatious or manifestly unreasonable. It will often be the case that a request for information only reveals its vexatious quality when put into context.

Could the request fairly be seen as obsessive?

18. The council argued that the request was obsessive. One of the main reasons given for this is that the planning and legal process relating to this particular matter were concluded some time ago. Those forums represented the proper place in which to challenge the decisions made by the council in this matter. The council has made it clear that it does not intend to revisit the issue. The council said that despite the complainant having made various allegations impugning the professional integrity of the council's staff and threatening to take further action, the fact is that no action has been taken and against this background, the volume of the requests being made has reached a stage where the latest request can fairly be characterised as obsessive.
19. In its refusal notice, the council said that it had taken into account a number of previous requests made by the complainant relating to Nayland Airfield. The ten items of correspondence in question, most of which contained multiple requests for information and involved comments and complaints, were given the following council references: 726, 732, 846, 954, 960, 1016, 1046, 1070, 1351 and 1540. The council said that the first request was in July 2009 and the pattern of behaviour has been ongoing since then.
20. The council said that the complainant considers that he has been unfairly treated by the council and channels that grievance through requests for information. For clarity, the complainant is a pilot. It is clear from the requests seen by the Commissioner that at the same time as making detailed requests for information, the complainant was

also pursuing complaints against the authority. The complainant makes clear that his purpose and motivation is to challenge the decisions made by the council and he is clearly unhappy with the impact those decisions have had on his own activities. In one request he made the following comments:

"I have recently made a series of complaints to the detriment of Babergh District Council, which involve planning as a peripheral issue. The complaints are about the conduct of investigations and the abuse of procedure by Babergh District Council which has resulted in a loss of rights, privileges and freedoms which I previously enjoyed and for which I had an expectation to continue to enjoy but for the standards of Babergh District Council.

Human Rights legislation requires Local Authorities to apply 'anxious scrutiny' before exercising the discretion to use coercive powers. Authorities need to demonstrate that discretionary use of power is both NECESSARY and LEGAL.

The difficulty I seek to resolve is how Babergh District Council moved to enforcement on the land in question in 2005 when, in 1995, they were provided evidence of established use which firstly they asked for and secondly, clearly met the authorities requirements as they did not challenge it...

I would be grateful if you would additionally pass on your findings to [name], the Deputy Chief Executive for Babergh District Council who is at present investigating my complaints"

21. In view of the evidence presented, the Commissioner was satisfied that it was fair in the circumstances to characterise the request in this case as obsessive. The request clearly forms part of a pattern of behaviour over a significant period of time. It is clear that the complainant is unhappy with the decision made by the council and cannot accept that the decision was subsequently challenged through appropriate channels by the appropriate person, in this case the landowner who was the subject of the enforcement notice and the High Court action and who the council says, had proper legal representation as part of that process.
22. It is not the Commissioner's role to determine whether there is any merit to the allegations being made by the complainant but what is clear to the Commissioner is that the complainant's requests in this case represent a disproportionate and inappropriate attempt to forensically dismantle and undermine the council's position through the use of EIR. The Commissioner recognises that there can be a thin line between persistence and obsession however there must be limits to

the amount of times that a public authority can reasonably be expected to revisit issues, especially when a decision has been made and challenged in the proper forums. When asked directly by the complainant to "admit that it is in error" and "indulge in dialogue" with the landowner and his legal representatives once more, the Deputy Chief Executive of the council issued the following response on 25 October 2010:

"...I have no reason to believe that the Council improperly introduced evidence in the High Court proceedings concerning Nayland Airfield nor that there was other form of improper conduct. Accordingly, there is no 'practice' which I need to condone.

As I understand it, you were not a party to those legal proceedings and I would not consider it appropriate for the Council to engage with you on the conduct of litigation with a third party, particular where that third party had the benefit of legal representation.

I note your intentions to present a file for criminal prosecution. The council is fully satisfied that it's [sic] officers acted entirely properly and in accordance with the law and it has no objection to its documentation being forwarded to the authorities.

In the circumstances, I do not consider it appropriate that the Council engages in any further dialogue with you in this matter".

23. In the Commissioner's view, at the heart of the issue is that the complainant wants the council to change its decision when it has made it clear that it has no intention of revisiting the issue. The complainant believes that he is presenting "irrefutable facts" and is highly unlikely to accept any other point of view. Continuing to pursue detailed requests for information against the background described above is, in the Commissioner's view, obsessive.

Did the request have the effect of harassing the council?

24. The Commissioner would like to highlight that this element of the criteria is concerned with the effect of the request on any reasonable public authority, rather than what the complainant's intention was. It is not uncommon in relation to vexatious requests for the requester to have a genuine conviction that the request was a reasonable one. It is also important for the Commissioner to highlight that the standard to be applied is an objective one concerning what effect the request is likely to have had on a reasonably robust public official.

25. The council brought to the Commissioner's attention that the complainant has questioned the honesty and integrity of the council's staff in correspondence he has sent to the council about this issue. He has made a number of serious accusations including perjury, perverting the course of justice, conspiracy, and malfeasance in public office and told the council in October 2010 that he was preparing a case for criminal prosecution. As far as the council is aware, no such action has been taken to date. The council provided statements concerning the impact that the council believes the complainant's correspondence has had on its staff.
26. When the Commissioner considered the sample correspondence sent by the complainant, together with the statements made by the council's staff, the Commissioner had reservations about whether the council had applied an objective standard in assessing the level of distress this correspondence would have been likely to cause a reasonably robust public official. Despite this, the Commissioner was satisfied that the overall nature of the correspondence would have contributed to the harassing effect of this request since it has been ongoing for a significant period of time and it was clear that the complainant was not going to be satisfied unless the council reversed the decision. The Commissioner considers that it would be reasonable for the council's staff to regard further requests and correspondence on the same topic from the complainant as harassing when there was every indication that responding would only lead to further requests, enquiries and complaints given the nature of previous engagement.

Would the request impose a significant burden?

27. The council drew the Commissioner's attention to its size and described itself as a "small authority" with "a very limited number of officers" who would deal with information requests. The council's staff have described to the Commissioner that dealing with the correspondence about this matter has been very time-consuming and has disproportionately distracted them from carrying out other work. The council also commented that the burden has been increased by the age of the information that has been sought and the number of files that the council holds on planning and legal issues on the sites.
28. The Commissioner considers that compliance with the request would impose a significant burden when its complete context is taken into account, that being the campaign that the complainant has been pursuing to force the council to reverse the decision. This is all the more so because it would clearly not bring this matter to a close but would instead be likely to generate more requests and complaints. It is clear to the Commissioner that the complainant's request and

correspondence since 2009 would have imposed a significant burden on public resources.

Is the request designed to cause disruption or annoyance?

29. The Commissioner considers that this part of the vexatious criteria is difficult to prove because it requires objective evidence that it was the complainant's intention to cause disruption or annoyance. The Commissioner did not consider that the council provided sufficiently strong evidence to show that this was the case. It appears that the complainant genuinely believes that he is acting in the public interest.

Does the request lack any serious purpose or value?

30. The council commented that given the history of this matter, it is difficult to see the serious purpose or value in responding to the request, particularly since it would not bring the matter to an end. The decisions taken had already been challenged in the proper forums. The Commissioner understands that the complainant's unwillingness to accept those outcomes stems from his belief that the council acted improperly when conducting those appeals and he says that his requests for information are part of his efforts to build up evidence to take the matter forward.
31. As already mentioned, it is not the Commissioner's role to determine whether there is any merit in the allegations being made by the complainant. However, it is clear to the Commissioner that the council does not accept those allegations and that continuing to respond to requests for information is not going to result in a resolution of those issues. The complainant says that he is collecting evidence however he has yet to pursue whatever other avenues may exist despite the number of requests made and the other responses received from the authority. As stated, there must be a limit to the number of times that a public authority can be expected to revisit a matter. It is the Commissioner's view that by the date of this request, there was no serious purpose or value to the request that would justify the overall burden now being imposed through requests for information.

Regulation 12(4)(b) - Public interest

32. Unlike section 14(1), this regulation has a public interest test associated with it. This means that even if the request was manifestly unreasonable, information can only be withheld if the public interest in maintaining the exception outweighs the public interest in disclosing the information.

33. There are important reasons why this exception exists under the EIR. Both the FOIA and the EIR give the public unprecedented rights to access recorded information held by public authorities. In exercising those rights, members of the public must be responsible. It was not the intention of the legislation that compliance with requests would impede disproportionately and unfairly on the many other important duties that public authorities have to carry out, often with limited resources in place. Similarly, it is not the intention of the legislation to allow members of the public to pursue grievances against public authorities to a disproportionate extent.
34. Given the background to this matter described in this notice, the Commissioner was not persuaded that there was sufficient public interest in compliance with the request. The strongest public interest by the time of this particular request was in upholding the exception in order to protect the public authority's resources and the reputation of the legislation.

Right of appeal

35. 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

36. 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.
37. 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

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