

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

Decision notice

Date: 25 June 2012

Public Authority: Northhill Parish Council

Address: parishclerk@northhillparish.co.uk

Decision (including any steps ordered)

1. The complainant requested information relating to an area of land owned by Northhill Parish Council ('the Council') adjacent to his property which he has previously attempted to purchase from the Council.
2. The Council has refused to comply with the requests because it considered them to be vexatious under the FOIA and manifestly unreasonable under the EIR.
3. The Commissioner's decision is that the Council correctly determined the requests to be manifestly unreasonable.
4. The Commissioner finds the Council in breach of section 17(5) in not providing a refusal notice in accordance with section 10 of the FOIA and in breach of regulation 14 of the EIR.
5. There are no steps to be taken.

Background

6. The complainant in this case comprises of the first named complainant and his wife. Correspondence on the same matter was sent by both individuals and therefore the Commissioner has considered requests sent by both as they are inextricably linked.
7. On 3 September 2009 the complainant and his wife contacted the Council expressing an interest in purchasing the land designated as a 'play area' adjacent to their property. At the same time the complainant requested that; if the purchase was not possible, play equipment be provided.

8. On 15 September 2009 the Council declined the request to purchase and informed the complainant that the request for the installation of play equipment would be considered by the Highways and Open Spaces Committee in October 2009.
9. The following year on 19 August 2010 the complainant made another request to purchase the piece of land. From this date there has been on-going correspondence between the complainant and his wife and the Council regarding the purchase. Some of the correspondence has comprised of requests made under the FOIA.
10. The Parish Council comprises councillors with one parish clerk employed on a part time basis. During the period covered by the requests for information the incumbent Parish Clerk resigned in August 2011 and her replacement was appointed from 5 September 2011.

Request and response

11. The complainants made the following requests for information:

28 February 2011

"I would like to request information relating to the total amount of money that has been spent maintaining the play area since its creation, including ANY expense the council has incurred. This information is relevant for my continual pursuit of the purchase of this land, and also the information's production would be very timely for the next meeting.

You make mention of a charge on the planning application to the land. I have the title number and am investigating this. Assuming the charge was removed, is there any fundamental reason why the council would not sell the land?"

14 June 2011

"Please can you advise of the date and location of the next council meeting?

How did you get on at Central Beds today - did you find the information you were looking for? What is the outcome?"

18 July 2011

"Please can you send me a copy of these documents as soon as possible so that I am fully aware of what they say prior to the

meeting. As you will appreciate we have a vested interested in this item and may wish to pose questions to Councillors relating to its contents at the meeting."

19 September 2011

"1. I am still awaiting a copy of the council document that David Milton read out at July's council meeting at Ickwell

2. The Children Slow sign - I am happy to chase it myself if you give me the contact details

3. Splay lines - I am happy to chase it myself if you give me the contact details

4. Spend to Date for the Pound Close play area - I am still awaiting this information - I was told some weeks ago that it has still not been properly collated.

New enquiries:

1. Please can you tell me how much interest the Pound Close money has accumulated over the 10+ years the council has had it. I request this under the Freedom of Information Act.

2. I have noticed that the rumble strips as you come into Upper Caldecote from Sandy (Vinegar Hill Road) are no longer causing any rumbling as they have been worn down. Also I have noticed that the 30 MPH sign on the road surface which is in a red tarmaced box - is so worn that very little of the red is now visible. I realise this is a Highways Issue - but I was hoping that the Parish Council could chase up Central Beds to get this dealt with.

3. On the approach to Moggerhanger there is a red tarmaced area saying SLOW - followed by about 20 metres of white triangle chevrons before a second red tarmaced box saying 30 MPH - the two bright red boxes and the chevrons makes it clear that you are entering a built up area and helps slow the traffic down. This may be the cheapest way to slow traffic down on the approach to Upper Caldecote while we are waiting to find out what larger traffic calming measures we are able to have on this stretch of road.

Please could you ask the Highways group to look into this."

28 September 2011

"As per our telephone conversation today - you advised me that play equipment had been investigated by [I think you said] Mid Beds a few years ago and that they had written to say this site was unsuitable for play equipment. I asked you for a copy of this document and I am

backing that request up in writing under the Freedom of Information Act. I look forward to this information within 20 working days"

12. Some of the requests made by the complainants are for the Council's comment and are not requests for recorded information. Other requests do relate to recorded information which is, or may be, held by the Council. Those requests made prior to 5 September 2011 form part of a conversational dialogue between the incumbent Parish Clerk and the complainants. The Council's correspondence with the complainants provided informal and on-going updates regarding the points the complainants raised in the normal course of business. The Council did not provide responses in accordance with section 1 of the FOIA (General right of access to information held by public authorities) or regulation 5 of the EIR (Duty to make available environmental information on request).
13. The Chairman of the Council wrote to the complainants on 5 September 2011 explaining the harassing effect of their correspondence. The Council wrote:

"Council resolved not to sell the Pound Close amenity land at the Council meeting on July 25th since which time you have inundated the Parish email address and the private e-mails of myself and the Vice Chairman, with demands for information on eight issues. None of us wish to restrict any parishioner's reasonable access to the Council through its Clerk, but the emphasis must be on 'reasonable'. I trust that we can expect you both to show more consideration for our new Parish Clerk from now on."
14. The Council went on to provide a refusal notice on 13 October 2011 with further clarification on 21 October 2011 determining that the complainants' requests were vexatious citing section 14(1) of the FOIA.
15. On 1 March 2012 the complainants confirmed to the Commissioner that the requests detailed above were still 'outstanding'.

Scope of the case

16. The complainant contacted the Commissioner to complain about the way his requests for information had been handled. He asked the Commissioner to consider whether the Council had correctly determined that his requests were vexatious or repeated under the FOIA.

17. In considering the complainants' requests for information the Commissioner determined that it is likely that the information sought falls within the ambit of both the FOIA and the EIR. He therefore considered that it would be necessary for him to determine whether the Council could rely on section 14 of the FOIA and on regulation 12(4)(b) of the EIR. Consequently the Commissioner asked the Council to consider these provisions and to provide its own considerations of them. The Commissioner considers that the complainants' requests for information on factors effecting the environment such as road signage and the state of land owned by the Council falls most appropriately within the EIR.
18. During the Commissioner's investigation, the Council accepted that some of the requests should actually have been considered under the EIR rather than the FOIA. It said that where that was the case, it wished to rely on regulation 12(4)(b) which relates to manifestly unreasonable requests under the EIR and considered that the public interest favoured maintaining the exception. The Commissioner agrees that some of the requests fall to be considered under the EIR rather than the FOIA.
19. The complainants raised other matters concerning the operation of the Council which the Commissioner explained were not a matter for his investigation.

Reasons for decision

20. **Section 14(1)** provides the following:

"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious."
21. Similarly **Regulation 12(4)(b)** provides the following:

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

(b) the request for information is manifestly unreasonable;"
22. The Commissioner's view is that it is permissible to refuse vexatious requests under regulation 12(4)(b) as manifestly unreasonable.
23. 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>

24. 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?

25. It will not be necessary for all of the above criteria to apply but in general, the more that apply, the stronger the case will be for a vexatious or manifestly unreasonable request. 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?

26. When a request for information is refused as vexatious or manifestly unreasonable, it is often the case that an examination of the background will reveal a long and difficult relationship between the parties that has arisen as a result of a dispute or a number of related disputes that have not been resolved to the satisfaction of the complainant. In this case the complainants disagree with the Council's decision not to sell to them the amenity land adjacent to the complainants' property.

27. The complainants explained to the Commissioner the history of their communications in this matter:

"We feel there is a culture of bias and/or predetermination dating back primarily to a Council meeting in July, and some requests are made to understand the true decision making process at the Council.

We have asked the Parish Council 3 times in 3 years to buy the Play Area. The country's economic landscape has changed beyond recognition during that time. 3 years has seen 3 different Parish Clerks and at least 4 new Councillors, and this is not obsessive."

28. The Council explained to the Commissioner that it expects parishioners to lobby councillors and communicate with the parish Clerk in order to bring their issues and concerns to the attention of the Council. However, the Council went on to explain that the persistence demonstrated by the complainants in pursuing the purchase of the land had resulted in a disproportionate amount of the correspondence received by the Clerk being sent by the complainants. The Council cited an example over a three week period in July 2011 of the complainants contributing 45 out of the 75 emails received by the Clerk.
29. In addition to the written correspondence the Council explained to the Commissioner that the complainants also pursued matters by telephone calls to the Clerk, some calls being outside her working hours. The complainants also attended the public sessions of Council meetings to request information on the same matters.
30. In an email to the Council dated 6 November 2011 the complainants stated their intention to pursue matters already considered by the Council:

"I absolutely do intend to use the request to reopen **issues** that have already been considered. However the FOI Act only discriminates against repeated (or suitably similar) **requests**, not **topics** of discussion."

31. The Commissioner notes that although the requests made by the complainants are not specifically repeated the majority of the correspondence from them is linked and concerns the same matter; that being the piece of land which they wish to purchase and the Council does not wish to sell. The complainants have made clear their intentions:

"We can assure you that seeing the play area several times a day when we leave our house only causes us to redouble our efforts. This is why we cannot and will not ever give up our objective to buy the play area.

You will appreciate that while we live here and while the Council own the play area we will be in constant communication with the Council as it seems that no maintenance is done unless it is requested by the residents."

32. The Commissioner has determined that there is sufficient evidence to conclude that the complainants' requests are obsessive and represent

attempts to reopen matters relating to the sale of the amenity land which have already been considered by the Council and a decision reached. The complainants have consistently demonstrated an unwillingness to accept the judgement of the Council which did not provide the outcome they desired. The Commissioner is aware of the complainants' conviction in their motive for corresponding with the Council. However, it is the Commissioner's view that it is unlikely that the Council would ever be able to satisfy the complainants until such time it agrees to the sale of the land in question. The evidence and arguments provided therefore supported the Council's case that the requests were obsessive.

Is the request harassing the authority or causing distress?

33. The Commissioner would like to highlight that when considering this part of the criteria, the Commissioner is not concerned with what the complainant's intention may have been. It is not unusual for a request to be deemed vexatious or manifestly unreasonable even though the complainant genuinely believes that the request and contextual behaviour was entirely justified. Instead, the Commissioner is concerned with the effect that the request would have had on any reasonable public authority and in this case a public authority with the limited resources of a Parish Council.
34. There will often be a significant overlap between the reasons why a request can fairly be seen as obsessive and the reasons why it may have had the effect of harassing the public authority.
35. The Council told the Commissioner that the complainants' communications beginning in 2009 had had the effect of harassing the Parish Clerks in post during 2011. The Council has provided evidence of the harassing effect of the complainants' contact with the Council. The Commissioner must take account of the limited resources of the Parish Council to adequately respond to the demands of all parishioners and notes that the complainants acknowledge their considerable amount of contact with the Council:

"It is true to say that we have contacted the Clerk and other Parish Councillors on many occasions to resolve the issues we have in Pound Close the volume of emails written to the Clerk has reached high levels due to several reasons:"
36. The complainants go on to explain that they hold the opinion that if more than one matter is included in an email only part of the email is answered. Also contributing to the volume is the 'chase-ups' they

consider to be necessary. An email written on 8 September 2011 explains:

"We give the Clerk one week to answer a question – then we send a chase up....In many instances we have been forced to send weekly chase-ups 4 or 5 times. For example we are still awaiting the council document you showed me in the Council meeting in July. I have counted in excess of 20 emails over more than 2 months on just this question alone – this is not harassment but sheer incompetence by the Clerk - who simply needs to put a copy in the post!!"

37. The Council has provided evidence of the antagonistic, condescending and accusatory content of some correspondence from the complainants. The Commissioner considers that there are sufficient grounds for determining the sequence of requests to be harassing for the Council. The Commissioner considers that it would not be unreasonable for a staff member to regard correspondence as harassing when there was every indication that it would only lead to further complaints and requests without generating a productive outcome.
38. Notwithstanding the limited resources referenced above in paragraph 34 the Commissioner's view is that Parish Councils form a layer of local government with decision making functions for which they should be properly accountable. Nevertheless the complainants' contact and harassing behaviour in this case have reached an excessive and unwarranted amount which the Commissioner has determined can no longer be considered to be fair and legitimate requests for information.

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

39. The Commissioner considers that compliance with the individual requests in isolation may not have been too burdensome, however, when taken in context, the Commissioner was satisfied that the requests formed part of a collective burden of correspondence that the Council had handled for over a year and that the distraction from its other duties had been substantial. Paragraph 28 above demonstrates the disproportionate amount of time taken to deal with the requests and queries brought by the complainants and the burden created for the limited resources of a small Parish Council. As already noted the evidence indicates that any response provided would be unlikely to satisfy the complainants and would result in further related requests. The Commissioner took this into account when deciding that compliance with the requests would impose a significant burden on this public authority.

Does the request lack serious purpose or value?

40. The Council argued that there was no serious purpose or value to the requests because it determined the requests to be designed to change the Council's decision on the sale of the amenity land. It explained that its decisions not to sell the amenity land each stand for six months and cannot be revoked in that period. The Council has also resolved not to discuss the matter for the lifetime of the incumbent Council (3 years).
41. The complainants consider that their requests "have significant value in highlighting wasted maintenance budget and time spent in administration of essentially a 'white elephant'".
42. The Commissioner is satisfied that the complainants had a serious purpose in making their requests for information. However, he has reservations on whether the purpose was as altruistic as the complainants suggest, and in the Commissioner's view this limits the value of the requests.

Is the request designed to cause disruption or annoyance?

43. The Council said that it was of the opinion that the requests were designed to cause disruption or annoyance as the complainants were clearly conducting a campaign to influence the Council into 're-opening issues which have already been considered' with the intent of agreeing to the sale of the amenity land. Although the Commissioner understands why the Council has formed this view, this part of the criteria is difficult to engage because it requires objective evidence of intention and motivation.
44. The Commissioner notes the complainants' reference to 'pester power' as the only means of achieving a response to their correspondence. However, the Commissioner was not persuaded that the authority provided sufficiently strong evidence to prove the intention behind the complainants' requests.

Conclusion

45. However, the Commissioner considered that the other elements of the criteria had been met to the required standard and that ultimately the Council had been able to demonstrate that the requests were vexatious or manifestly unreasonable.

Regulation 12(4)(b) - Public interest

46. This part of the Commissioner's analysis only relates to the complainants' requests insofar as the information sought is environmental information and therefore falls to be considered under regulation 12(4)(b) of the EIR. Unlike section 14(1) of the FOIA, 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.
47. There are important reasons why this exception exists under the EIR. Both the FOIA and the EIR give the public 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 other 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 personal grievances against public authorities.
48. The Commissioner considered that it was clear that on this occasion, the complainants had not exercised their rights responsibly and this had resulted in an unacceptable burden being imposed on the public authority's limited resources. The Commissioner considered that the complainants' requests are, in the main, an attempt to pursue their own personal issues against the authority because they will not accept the response provided in respect of their purchase of the amenity land. The complainants explained to the Commissioner their view that the cost of the amenity land was a waste of public money:
- "Given that we were denied constructive feedback, we began requesting information that would help us prove the case that taxpayer's money was (and continues to be) wasted on a Play Area that 99% of the Parish will never see or visit, and 99% of those will never use.
Our family could make use of the area, for instance as a Granny Annex for our aging and infirm parents."
49. The Commissioner notes this opinion and has considered the cost to the public purse of an unused amenity. However, he does not consider that this sufficiently weighs in favour of disclosure of the requested information in this case.
50. The Commissioner went on to consider whether disclosure of the requested information would serve to satisfy the requirements of

transparency and accountability of the Council. Indeed a number of differently constituted Information Rights Tribunals have indicated that weight must be attached to a general principle of accountability and transparency. In providing information on the Council's decisions, including financial decisions, in respect of the amenity land the Council assists the general public in its understanding of the Council's decisions and as a result increases its transparency and accountability resulting in greater public understanding and involvement.

51. The complainants refer to, in their opinion, a lack of openness and transparency in the Council's handling of their requests because the Council has they state; "appeared so 'closed' to our requests for information, and many Councillors still have not taken up our offer to meet face to face to discuss this, or any other issue."
52. The Commissioner does not accept that in refusing to provide the requested information the Council is failing in its accountability or transparency. The democratically elected Councillors must be allowed to reach settled decisions on matters put before it without the requirement to repeatedly review those decisions. Furthermore, the Commissioner does not consider the course of action taken by the complainants to be an appropriate way in which to attempt to challenge those decisions. The Commissioner considers that on this point the public interest weighs in favour of maintaining the exception. In addition, the Commissioner does not consider that there is any public interest in compliance with these requests that would outweigh the particularly strong public interest in upholding the exception in order to protect the public authority's resources.
53. For clarity, given the history and nature of the complainants' correspondence and conduct, the Commissioner is of the view that his findings on section 14(1) and regulation 12(4)(b) are relevant to all of the information requests which form the scope of this case.

Refusal Notice

54. The Commissioner is satisfied that the requests are vexatious or manifestly unreasonable; however, he does not consider that the Council initially responded appropriately to the requests for information. This resulted in some of the requests dating from February 2011 not being responded to with an appropriate refusal notice provided.
55. In accordance with section 17(5) of the FOIA a refusal notice relying on section 14(1) should have been issued within the time for complying with section 1(1) [that being 20 working days]. However, at the first

determination of section 14(1) and thereafter in accordance with section 17(6) the Council is no longer obliged to respond.

56. Furthermore, to the extent that these requests were for environmental information, the Council breached regulation 14 in this respect.
57. The Commissioner notes the limited resources of the Council and the initial 'conversational, normal course of business' approach taken by the Council and the complainants. Nevertheless any request for information can be a request in accordance with the FOIA or the EIR and should be treated as such. The Commissioner's guidance should assist in the Council's application of the information access legislation.

Right of appeal

58. 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

59. 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.
60. 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

Alexander Ganotis
Group Manager – Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF