

Freedom of Information Act 2000 ('FOIA')
Environmental Information Regulations 2004 ('EIR')
Decision notice

Date: 29 July 2013

Public Authority: Basildon Council
Address: The Basildon Centre
St Martin's Square
Basildon
Essex
SS14 1DL

Decision (including any steps ordered)

1. The complainant has requested information related to the Forestry Commissioner and legislation concerning the removal of trees. The Commissioner's decision is that Basildon Council has correctly applied the exception for manifestly unreasonable requests at regulation 12(4)(b) of the EIR. He does not require any steps to be taken.
2. However, the council breached regulation 14(3) by failing to reference either the specific regulation being relied upon or any public interest test considerations.

Request and response

3. On 3 January 2012, in a letter relating to a planning appeal, the complainant wrote to Basildon Council ('the council') and requested information in the following terms:

"I note that the report submitted to the Development Control and Traffic Management Committee states that despite there being no tree preservation orders on the trees, permission would be required from the Forestry Commission to remove any of the trees. I would be most grateful if you could advise me of the Forestry Commission's contact address and as to exactly where the legislation is to be found upon

which these claims are based so that I may look into this matter and if necessary make an application to the Forestry Commission."

4. Having received no reply, the complainant wrote to the council again on 19 March 2012 stating;

"I am particularly and urgently requesting clarification as to where legislation is to be found, and where contact needs to be made with regard to the need for permission to be obtained from the Forestry Commission for trees at [property name] to be removed as requested in my letter addressed to [named individual] dated 3rd January 2012. I am now formally requesting this information to be provided under the Freedom of Information Act."

5. The council acknowledged receipt of the above letter on 23 March 2012 and wrote to the complainant on 11 April 2012. It referred to the letter of 19 March 2012 and said that;

"Any further issues which you raise which the Council considers closed will not be responded to. Again, I would remind you that your contact with the council is limited to one letter per month."

6. On 18 April 2012, the complainant requested an internal review. The council's letter of 24 August 2012 refers to the information request made on 19 March 2012 but does not directly address the request. Instead, it stated the following;

"I have established that reference to permission from the Forestry Commission was made by the Council's Senior Arboriculturalist at the time. I have enclosed a copy of the committee meeting minutes which contain the reference (Development Control and Traffic Management Committee Tuesday 18 October 2011 Item 5 page 109 refers). I am still trying to establish what information the Council holds to support this statement."

Scope of the case

7. The complainant contacted the Commissioner on 7 January 2013 to complain about the way his request for information had been handled.
8. After receiving notification of the complaint on 7 February 2013, the council wrote to the Commissioner on 18 February 2013 informing him that the request was deemed vexatious at the time but it did acknowledge the letter and reply on 11 April 2012.

9. During a telephone conversation on 10 June 2013, the council confirmed that it was applying the exception at regulation 12(4)(b) of the EIR to the request for the same reasons as provided during the investigation of case references FS50381386 and FS50399683.
10. The Commissioner has therefore considered whether the council can rely on the manifestly unreasonable exception at regulation 12(4)(b) of the EIR.

Reasons for decision

Regulation 12(4)(b) – Manifestly unreasonable

11. Regulation 12(4)(b) of EIR states that:

“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;”
12. The Commissioner recognises that, in practice, there is no material difference between a request that is vexatious under section 14(1) of the FOIA and a request that is manifestly unreasonable on vexatious grounds under the EIR. The Commissioner has therefore considered the extent to which the request could be considered as vexatious.
13. The term ‘vexatious’ is not defined in the legislation. In *Information Commissioner vs Devon County Council & Dransfield*¹ the Upper Tribunal took the view that the ordinary dictionary definition of the word vexatious is only of limited use, because the question of whether a request is vexatious ultimately depends upon the circumstances surrounding that request. The Tribunal concluded that ‘vexatious’ could be defined as the “...manifestly unjustified, inappropriate or improper use of a formal procedure” (paragraph 27). The decision clearly establishes that the concepts of ‘proportionality’ and ‘justification’ are central to any consideration of whether a request is vexatious.
14. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public and its staff); (2) the motive of the requester; (3) the

¹ UKUT 440 (AAC) (28 January 2013)

value or serious purpose of the request; and (4) and harassment or distress of and to staff. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it

stressed the "importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).

15. The Commissioner has therefore considered whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to the serious purpose and value of the request.
16. The Commissioner considers that as this request represents a continuation of the complainant's long running dispute with the council related to planning issues with his property, the analysis and conclusions set out in the decision notice FS50381386² are also applicable in this instance. For brevity, the Commissioner will not reproduce the content of that decision notice here but he has adopted the analysis and concluded that the council correctly applied the manifestly unreasonable to this request. He acknowledges that his guidance on the subject of dealing with vexatious requests³ has been amended since the decision notice referred to above, but nevertheless considers that these arguments show that the serious purpose and value of the request does not justify the disproportionate level of disruption, irritation and distress caused.
17. The Commissioner also notes that the previous decision notices were unsuccessfully appealed to the First-tier Tribunal (Information Rights) and the decision on that case contained the following comment:

"Viewed in the round it is clear that these applications for information are part of a relentless challenge to the Council which has gone on for many years, at great expense and disruption to the Council, some distress to its staff, with negligible tangible results and little prospect of

² http://www.ico.org.uk/~media/documents/decisionnotices/2011/fs_50381386.pdf

³

http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

ever attaining them. It is simply pointless and a waste. It is manifestly unreasonable for a citizen to use information legislation in this way.”⁴

Regulation 14(3)

18. Regulation 14(3) provides that where a public authority applies an exception under regulation 12, the refusal shall specify the reasons not to disclose the requested information including the exception relied upon and the matters considered under the public interest test.
19. As the councils response to this request did not reference either the specific regulation being relied upon or any public interest test considerations, the Commissioner finds that the council has breached regulation 14(3).

Other matters

20. Although they do not form part of this decision notice the Commissioner wishes to highlight the following matters of concern.

Section 50(1) of the Act requires the Commissioner to make a decision in relation to complaints he receives about public authorities' compliance with the FOIA and EIR when dealing with requests for information. However, under section 50(2)(c) the Commissioner has the right to refuse to make a decision if it appears to him that a particular application is frivolous or vexatious.

In view of the findings of this decision notice, and that in the cases of FS50381386 and FS50399683 and the Information Tribunal case⁵, the Commissioner considers that the complainant has sought to use requests for information and subsequent complaints to the Commissioner as a means of pursuing his grievance against the council. The Commissioner believes this represents a pattern of vexatious behaviour. In future the Commissioner will consider whether it is appropriate for him to exercise his discretion under section 50(2)(c) to refuse to make a decision in relation to any complaint about a request of a similar nature from the complainant.

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<http://www.informationtribunal.gov.uk/DBFiles/Decision/i837/20120808%20Decision%20EA20110302;%2020120059;%2020120060.pdf>

⁵ Appeal No: EA/2011/0302, EA/2012/0059, EA/2012/0060

Right of appeal

21. 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

22. 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.
23. 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
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