

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 July 2014

Public Authority: Hampshire County Council
Address: Corporate Services
The Castle
Winchester
Hampshire
SO23 8UJ

Decision (including any steps ordered)

1. The complainant has requested from Hampshire County Council (the "Council") information relating to Baughurst Footpath 10. The Council deemed the request as vexatious and manifestly unreasonable. It cited regulation 12(4)(b) of the Environmental Information Regulations (the "EIR") and section 14 of the FOIA for its reasons to not comply with the request. The complainant also submitted two further requests to the Council that were not responded to.
2. The Commissioner's decision is that the Council correctly applied regulation 12(4)(b) of the EIR to all of these requests.
3. However, the Commissioner has also decided that the Council did not comply with regulation 5 in that it did not issue any response, or refusal notice, to the requests of 12 and 25 January 2013.
4. The Commissioner requires no steps to be taken.

Request and response

5. The background to this case is the course of a public footpath (known as Baghurst Footpath 10), which the complainant has disputed. This has resulted in a history of communications and correspondence between the complainant and the Council, and a number of information requests

being made. On 23 July 2011 the complainant wrote to the Council and requested the following information:

"...all internal communications, e-mail trails, minutes, comments, drafts, and advice sought and obtained in respect of what I had written; the data generated by my "stopping up" in 2008 of the route for Footpath 10 now shown in the Definitive Map; and the data generated by the Notice served on me on 20th July 2011 under section 143 of the Highways Act."

6. Following a further exchange of communications, the complainant wrote to the Council on 24 September 2012 and (with reference to the request of July 2011) requested *"all data generated by my data request itself."*
7. On 22 November 2012 the Council responded to the complainant's request of 24 September 2012. It refused this request on the basis that it was vexatious (s.14) and manifestly unreasonable (reg. 12(4)(b)).
8. In issuing this response the Council had taken into account a letter it had sent to the complainant on 2 October 2012 which referred to his continued correspondence on the topic of the footpath and had advised him that any further requests for information may be regarded as vexatious or manifestly unreasonable.
9. Subsequently, the complainant made two further requests to the Council on 12 and 25 January 2013. These two requests are repeated in full in the Confidential Annex attached to the end of this notice. The complainant did not receive a response to these requests.

Scope of the case

10. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
11. The Council has confirmed to the Commissioner that it did receive the requests of 12 and 25 January 2013. It did not respond on the basis that it had already informed the complainant that his requests were vexatious and it was under no obligation to issue a new response because of section 17(6) of the FOIA.
12. During his investigation the Commissioner wrote to both parties and confirmed that the scope of this case would be to consider:
 - whether the Council was correct to refuse the request of 24 September 2012 on the basis that it was vexatious / manifestly unreasonable; and

- the Council's handling of the requests of 12 and 25 January 2013.

Reasons for decision

13. The Commissioner has first considered whether the requests are in part or wholly for environmental information.

Is the information environmental?

14. Information is "environmental" if it meets the definition set out in regulation 2 of the EIR. Under regulation 2(1)(c), any information about measures, such as plans, agreements or activities, that may affect the elements contained within regulation 2(1)(a) will be environmental information.
15. As noted above, the substantive matter that lies behind these requests is the disputed course of a public footpath. The complainant has made a series of requests about the course of the footpath and the surrounding dispute, and about the information that has been generated as a result of these requests. Taking these factors into account, the Commissioner is satisfied that the requests are all for information that falls under the definition of environmental information.
16. The Commissioner has therefore only considered the Council's handling of the requests under the terms of the EIR.
17. The Commissioner has first considered the request of 24 September 2012.

The Council's handling of the request of 24 September 2012

18. This request was refused by the Council on the basis that it was manifestly unreasonable. The Commissioner has first considered whether this exception is engaged.

Regulation 12(4)(b) – Manifestly unreasonable

19. The EIR allow public authorities to refuse a request for information that is manifestly unreasonable. The inclusion of the word "manifestly" means that there must be an obvious or clear quality to the unreasonableness.

20. The purpose of the exception is to protect public authorities from exposure to a disproportionate burden or an unjustified level of distress, disruption or irritation, in handling information requests.
21. The Council has explained why in the circumstances of this case it considers the request to be manifestly unreasonable. It provided the Commissioner with evidence of correspondence from the complainant between January 2012 and November 2012.
22. By way of background the Council has explained that in September 2005 the Council's Regulatory Committee considered a report that recommended the deletion of the footpath in question, on the grounds that the route was incorrectly recorded as a public right of way on the definitive map. The order to delete the path was opposed, and referred to the Planning Inspectorate, which subsequently called a local public inquiry. The Inquiry was held in June 2007, and the decision was made not to confirm the Council's order to delete the footpath. The Council decided not to appeal or judicially review this decision. The Council has explained that the complainant has, since this time, sought to challenge the Council's decision not to challenge the findings of the Inquiry. The Council also informed the Commissioner that the complainant had made complaints about the issues that lay behind the requests that had been subject to its own complaints procedures, and subsequently to the Local Government Ombudsman (the "LGO"). The LGO's decision was that the Council was not at fault and did not uphold the complaint.

Burden on the authority / Disproportionate effort

23. The Council has confirmed that it has received a large volume of correspondence from the complainant since the decision was made not to challenge the Inquiry. In particular, it informed the Commissioner that the complainant;

"...has consistently questions the Inspectors decision and the County Council's decision not to challenge, has asked for all correspondence between various parties since the Order was made, details of land searches, all correspondence between the County and Parish Council in the 1930's and 1950's."
24. It has argued that dealing with this correspondence and the requests contained within it has imposed a significant burden on the Council. It also provided evidence of those requests. In particular it has stated that the complainant;

"...has submitted a total of seven FOI/EIR requests before the final request was declared vexatious. In addition he has made a formal complaint which he unsuccessfully pursued to the LGO. In addition he

has written many letters and emails, both to the Information Compliance Team, the Legal Environment Team and to the Countryside Service...He has also telephoned on many occasions..."

25. It has also argued that it has had to use disproportionate resources on a matter that had been subject to a Public Inquiry, the findings of which it is under a legal requirement to implement.

Unreasonable persistence

26. The Council confirmed that a number of the complainant's correspondence have covered issues previously discussed and responded to by the Council. It provided the Commissioner with an evidence log which demonstrates the dates of the request, the request details and the Council's responses. The Commissioner also notes again that the issues that lie behind these requests have been subject to a complaint to the LGO, which was not upheld.

Serious purpose or value

27. The Council stated that it does not dispute that the complainant believes his request and correspondence have a serious purpose. However, the Council had pointed out that the decision not to challenge the findings of the Inquiry was made seven years ago. The complainant continues to challenge and demand further information on this topic. In the Council's view, this does not amount to serious purpose or value.

Detrimental impact; workload, irritation and distress

28. The Council provided the Commissioner with some of the key contact dates from the complainant. An example was given that between January 2012 and November 2012, 30 letters were received by various officers at the Council. These letters varied in length from two to six pages and contain multiple statements, questions and opinions. The complainant had also submitted two subject access requests and complaints regarding on-going enforcement of the rights of way.
29. The Council explained how the complainant's letters would often imply incompetence and would question the integrity of the officers he had dealt with. The Council added that the volume and repetition of the complainant's opinions over a long period of time had caused distress to the officers concerned.

Is the exception engaged?

30. The Commissioner has considered the points made by the Council and its reasons to refuse the request for information. In particular he notes that the events that lie behind this request took place several years ago, and have been the subject of a complaint through both the Council's internal procedures and the LGO – which was not upheld. He notes the amount of correspondence that has been sent by the complainant to the Council on this topic, and the number of requests that have been made. Although he accepts that this is a matter of some importance to the complainant, he finds the Council's arguments that the request does not have a serious purpose or value persuasive. He also accepts some of the complainant's correspondence covers issues previously discussed and responded to by the Council. Therefore he considers that regulation 12(4)(b) is engaged.

Public Interest Test

31. The Commissioner has gone on to consider whether the public interest in maintaining the exception outweighs the public interest in disclosing the information.
32. In the circumstances of this case, the Council did not explicitly undertake a public interest test. However, having considered the Council's arguments, the Commissioner is satisfied that the Council had implicitly considered the public interest factors in its refusal of the complainant's request.
33. The Council argued that there is little or no public interest in the complainant obtaining further information on this topic. It explained that in doing so it will not provide him with any means to reopen the debate over a decision taken a long time ago. It added that the recording of the footpath on the definitive map is not a matter of great concern to the wider public beyond the complainant and his near neighbours. The Council said that the complainant is the only person contesting the footpath in question.
34. Having considered the evidence provided in this matter, the Commissioner concurs with this view and finds that the public interest in openness, transparency and the disclosure of environmental information, is outweighed by the public interest in preventing further public resources being diverted to respond to the complainant's request.
35. Therefore the Commissioner considers that the Council was correct to rely upon regulation 12(4)(b) in relation to this request.

The Council's handling of the request of 24 September 2012

36. Regulation 5 of the EIR states:

"Regulation 5(1)

Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

Regulation 5(2)

Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request."

37. During the investigation of the case the Council confirmed that had received the requests of 12 and 25 January 2013. However, it considered that these had not raised any new issues. As it had already informed the complainant that it thought his request of 24 September 2012 was vexatious it considered that section 17(6) of the FOIA applied, and as such it had not issued a new response to these requests.
38. Section 17(6) states that where a public authority has previously issued informed a requestor that their request is vexatious (under section 14 of the FOIA), and the requestor continues to make requests about the same issue it is not under a duty to issue a further refusal notice to the requestor where it would be unreasonable for it to do so under the circumstances.
39. However, it is important to note that there is no equivalent to section 17(6) of FOIA under the EIR. In this instance, and as noted at paragraph 14 above, the Commissioner considers that these requests are for information that falls under the definition of environmental information. As such, the Commissioner considers that the Council was under a duty to respond to the request as required by Regulation 5.
40. During the investigation of this case, and in relation to these requests, the Council informed the Commissioner that:
- it considered these requests to be vexatious;
 - there is a clear linkage between these requests and earlier requests made by the complainant;
 - that these requests are disproportionate to the issue; and

- again, that it has had to provide disproportionate resources to dealing with the complainant's requests.
41. Taking into account the Council's arguments that it considers these new requests to be vexatious, and given the circumstances of the case, the Commissioner has gone on to consider whether the Council can apply regulation 12(4)(b) to these requests on the basis that they are manifestly unreasonable.
 42. The Commissioner notes that the 12 January 2013 request broadly reiterates the request made by the complainant on 24 September 2012; whilst the request of 25 January 2013 broadly reiterates previous requests made by the complainant to the Council – which it has previously responded to. Indeed, he notes that the 25 January 2013 request is titled, "REPEAT REQUEST FOR INFORMATION" (complainant's emphasis).
 43. Given the interlinked nature of the various requests under consideration in this case, the Commissioner considers that it is appropriate to take into account the Council's arguments previously advanced in relation to the complainant's request of 24 September 2012.
 44. Taking all these factors into account, and for the same reasons as set out above, the Commissioner considers that that the Council can rely upon regulation 12(4)(b) to refuse to deal with these two requests.

Right of appeal

45. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

46. 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.
47. 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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