

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 1 March 2022

Public Authority: Witherley Parish Council
Address: clerk@witherleyparishcouncil.gov.uk

Decision (including any steps ordered)

1. The complainant has requested information with regards to a Neighbourhood Development Plan. Witherley Parish Council (the council) provided some information, then following two internal review requests, the council issued a refusal notice citing section 14(1) of the Freedom of Information Act (the FOIA) – vexatious request.
2. The Commissioner's decision is that the request fell under the EIR and accordingly found that regulation 12(4)(b) of the EIR – manifestly unreasonable - was engaged and that the public interest favours maintenance of the exception
3. The Commissioner does not require any steps, but has set out some points in the 'other matters' section of this decision notice for both parties to note.

Request and response

4. On 8 February 2021 the complainant made the following information request to the council:

"a) The minutes of the NDP Steering Group 13/11/2019 - Under the Heading of Matters arising mention is made of The Housing and Build Environment Theme Group issuing a statement in which they say that they 'reject any suggestion that they would demonstrate bias in their deliberations and that they will continue to adhere to the Parish Council's Code of Conduct and the Nolan Principles'.

This comment appears to relate to the previous meeting of the NDP Steering Group held on the 9th October 2019. Please disclose all documents and transcripts that explain why the Housing and Build Environment Theme Group felt is necessary to issue this statement.

b) The Terms of Reference for the Steering Group have been published on the NDP pages of the Parish Council's Web site. However, on reviewing the minutes it seems input was made to the Terms of Reference by both the representative from RCC as well as by YourLocale. Please therefore disclose copies of all versions of the Terms of Reference plus all the professional advice provided by RCC, YourLocale and any other external consultants, on the content of the Terms of Reference.

c) Please provide a copy of the advice or source information that the Parish Council were provided with which suggested and/or recommended that the minutes and information provided by the Theme Groups might be exempt from enquiries under The Freedom of Information Act, given that the legislation provides for the redaction of any commercially sensitive material or information.

d) The Parish Council Website only displays the NDP Steering group minutes. Please supply copies of all the Steering Group Agenda as well as the Agenda and Minutes for the three Theme Groups."

5. The council responded on the 8 March 2021 stating no information was held to parts a) to c) of the request, and provided agendas and minutes to part d) of the request.

6. The complainant requested an internal review on the 15 March 2021 as she considered further information was still held by the council that should be provided.
7. On 11 April 2021 the complainant then requested a second internal review listing further information she considered to be held, that had not been provided.
8. On 12 July 2021 the complainant contacted the Commissioner stating that she had not received a further response from the council.
9. On 14 July 2021, the council wrote to the complainant, refusing to respond further applying section 14(1) of the FOIA as it considered the request to be vexatious.

Scope of the case

10. The complainant contacted the Commissioner as she disputes the council's application of section 14(1) of the FOIA to refuse her request.
11. The scope of the case is for the Commissioner to firstly determine whether any or all of the information request falls within the EIR and then determine whether the council is correct to refuse the request under section 14(1) of the FOIA or regulation 12(4)(b) of the EIR - manifestly unreasonable.

Reasons for decision

Is the requested information Environmental Information?

12. The Commissioner has first considered whether the requested information would constitute environmental information as defined by regulation 2(1) of the EIR.
13. The council has concluded that this particular request does not fall under the EIR and should be considered under the FOIA.
14. In this case, the request is for information in relation to a neighbourhood plan¹. The Commissioner's understanding is that a

¹ [Neighbourhood Development Plan | Witherley Parish Council](#)

neighbourhood plan is by its very nature related to the development of land.

15. The Commissioner is therefore satisfied that the request does fall under the EIR. Regulation 2(1)(c) with (b) is relevant to the request. The information requested would relate to measures affecting, or likely to effect the elements of the environment, namely the landscape. Therefore the Commissioner will go on to consider whether the request is manifestly unreasonable under regulation 12(4)(b) of the EIR.

Regulation 12(4)(b) of the EIR – Manifestly unreasonable

16. Although there is no definition of 'manifestly unreasonable' under the EIR, the Commissioner's opinion is that 'manifestly' implies that a request should be obviously or clearly unreasonable. The Commissioner recognises that, on occasion, there can be 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.
17. The Commissioner has therefore considered the extent to which the request was manifestly unreasonable on the ground that it was vexatious.
18. The term vexatious is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the Information Commissioner Devon CC v Dransfield². The Tribunal commented that vexatious could be defined as the "manifestly unjustified, inappropriate or improper use of a formal procedure." The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
19. In the Commissioner's view, the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
20. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in his

² [Information Commissioner -v- Devon County Council and Dransfield | Courts and Tribunals Judiciary](#)

published guidance.³ The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of the case will need to be considered in reaching a judgement as to whether a request is vexatious.

21. This request and all the other requests referred to in this decision notice relate to a Neighbourhood Development Plan (NDP). The Commissioner, from reading the council's response and complainant's submissions, notes that there is division and disagreement between the council and a number of residents in relation to the NDP, in particular, concerning the amount of information that has been made available to the public.
22. The council submits to Commissioner that a disproportionate burden has been placed on it by the sheer number and frequency of requests it has received relating to the NDP, including from the complainant.
23. It has referenced the Tribunal case of *Betts v ICO*, (EA/2007/0109 19 May 2008) in which the Tribunal stated "Although the latest request was not vexatious in isolation, the tribunal considered that it was vexatious when viewed in context. It was a continuation of a pattern of behaviour and part of an ongoing campaign to pressure the council. The request on its own may have been simple, but experience showed it was likely to lead to further correspondence, requests and more complaints. Given the wider context and history the request was harassing, likely to impose significant burden and obsessive."
24. The council also took into consideration *Dadswell vs ICO* (EA/2012/0033 29 May 2012) which stated "...anyone being required to answer a series of 93 questions of an interrogatory nature is likely to feel harassed by the sheer volume of what is requested"
25. The council has stated that the council's only employee is its clerk who is contacted to work 48 hours per month, and had been inundated with information requests from the complainant and other members of a group of residents, which the council states has spread rumours of council corruption, lies and deceit on social media sites. The council also stated that this group had publicly vowed to "bring the council down".
26. The council states that many of the requests it has received were lengthy in wording, and this, coupled with the volume received, has

³ <https://ico.org.uk/media/1198/dealing-with-vexatious-requests.pdf>

caused the council difficulty in working out what documents were being requested in some cases.

27. The council says that it has had to ask requestors to keep their requests specific and also entitle them "FOI Requests" so they could be easily identified, which the council states has been done.
28. The council has provided the Commissioner with a spreadsheet recording the amount of requests received. This spreadsheet records that 21 requests were received from the complainant between 3 November 2020 to 12 July 2021. Five of these requests were made from 3 November 2020 to the date of this request, 8 February 2021.
29. It also shows that following the complainant's information request of 8 February 2021, within the 20 working timeframe for the response to be provided, the council has recorded that the complainant made four further information requests to the council.
30. Then after the complainant requested her internal reviews on the 15 March and 11 April, by 10 May 2021 (the date the second internal review response was due) the council has recorded that the complainant made 8 further information requests.
31. So within a three month timeframe of the complainant making her 8 February 2021 request up to the due date of the final internal review to be responded to, the complainant had submitted a further 12 information requests to the council.
32. The council considers that this is a disproportionate amount of requests to have to deal with and respond to and has caused a significant burden on the clerk's time to carry out her other functions, and that it has impacted on the council's ability to respond to requests within the required timeframe of 20 working days.
33. With regards to the above, the Commissioner can only consider the circumstances of the case up to the final date that the response to the request was due, that being 20 working days following the date of the request – up to the 8 March 2021. The spreadsheet records 10 information requests being made from 3 November 2020 to 8 March 2021.
34. The council also highlighted in its refusal letter to the complainant that since 3 November 2020 to the date it issued its vexatious refusal letter of 14 July 2021, the complainant sent 219 emails to the council. That equates to an average of over 27 emails a month. The Commissioner sees that this as a high volume of correspondence for any size of public authority to have to receive, let alone a parish council with one employee.

35. The Commissioner accepts that this accumulation of requests and email correspondence would have placed a strain on the council's ability to respond and carry out its other duties.
36. The Commissioner is aware that the council has provided responses to the complainant's information requests to varying degrees, and that the complainant is dissatisfied with the amount of information received and/or detail of the responses provided.
37. However the Commissioner can see how the accumulation of these requests being received within the timeframes identified, could impact on the council's ability to gather information and attempt to respond to requests within the required timeframes, and would place a significant burden on its ability not only to respond, but also carry out all of its other day to day functions.
38. Submitting frequent and overlapping correspondence before a public authority has had an opportunity to address a requestors earlier enquiries is listed as one of the identifiers in the Commissioner's guidance on vexatious requests.
39. The council has told the Commissioner that it also wrote to the complainant on 4 March 2021 to try to stem the flow of requests being received, citing that it may look to rely on section 14(1) of the FOIA due to the frequency of the requests being received. However, the requests continued.
40. It also says that it has offered to meet face to face and discuss miscommunications and set records straight by asking the complainant directly and through the HBBC monitoring officer. It has suggested possibly bring in an independent body to help the process. But council state that this has not been taken up.
41. The complainant has told the Commissioner that she has responded to HBBC monitoring officer, via email, setting out the background and history of the case but in short, she can not see that there would be any matters where she would be prepared to make any concessions or overlook any point.
42. The complainant has argued that the information requested should be in the public domain and easy to access.
43. The complainant provided a copy of a consultation response by the Local Borough Council, Hinckley & Bosworth Borough Council (HBBC) to the

council, published on its website on 27 January 2021 titled "Consultation response to the draft Witherley Neighbourhood Plan – Pre Submission (Regulation 14)".⁴

44. The Commissioner's understanding is that once there is a draft plan of the neighbourhood plan, it must be subjected to pre-submission consultation (Regulation 14). The proposed plan will be submitted to the local planning authority, HBBC, in this case - which will check that the necessary documents have been provided.
45. The complainant says that the HBBC response highlights one specific issue that the council had failed to publish any minutes or agendas or support documents in relation to Regulation 14 stage of the NDP as required and, this was indicative of a critical lack of consultation.
46. The complainant argues that the need for making the requests became apparent as the council refused to engage with residents who have asked questions and says she has become aware that she is not the only resident or organisation to be making requests. She is aware of at least 10 other residents making requests on this matter.
47. As the complainant's view is that the information being requested should have already been placed in the public domain, then the council are wrong to rely on the judgement in *Betts v ICO*, because had all this material been made available on the council's website, then there would have been no need for a request for the information in the first place.
48. The complainant also argues that she therefore has a "justified persistence" in making her requests as the council has established a pattern of failing to produce documents.
49. The Commissioner has viewed this HBBC consultation response, and at the final page of it (pg 23) it finds that relevant information has not been made public and states that the council does "now have time between the close of this consultation and the submission of the plan at Regulation 15 to ensure full transparency and openness."
50. The Commissioner notes that the council was still within those timeframes to make the relevant information available when the requests were received from the complainant.

⁴ [Witherley Neighbourhood Development Plan | Hinckley & Bosworth Borough Council \(hinckley-bosworth.gov.uk\)](https://www.hinckley-bosworth.gov.uk/development-planning/witherley-neighbourhood-development-plan)

51. In the Commissioner's view, the HBBC suggested what seems to be a reasonable approach for the council to take in order to achieve the transparency and openness in retrospect of the regulation 14 stage of the NDP.
52. The Commissioner acknowledges that the complainant does not consider she has received all the information requested, he also accepts that things such as a NDP, which has a direct impact on residents, will cause a council to receive correspondence and information requests in relation to it, and that there will be opposing views to the council's.
53. The Commissioner can see how the findings, about openness and transparency, in HBBC's 27 January 2021 consultation report about the publishing of minutes and agendas would generate a higher volume of correspondence from the public to the council including requests for recorded information.
54. However, the Commissioner needs to balance the proportionality and burden being placed on a public authority, in having to deal with information requests, as well as the impact it can have on the public authority's ability to carry out its other functions.
55. In the Commissioner's view, the volume of requests received in the timeframe described in this decision notice appears to have overwhelmed the council. A parish council, with one employee does not have the same resources as a larger council.
56. The council appears to have tried to provide information it does hold. The council is of the view that the required information has now been placed on its website.
57. At the time of the request, and up to the council issuing its refusal notice stating that the request was vexatious, the council was still within the timeframe suggested by HBBC for the council to set about ensuring full openness and transparency.
58. The Commissioner has therefore taken in to account whether the volume of requests for information, coupled with the volume of emails, from the complainant is disproportionate and unjustified when considering HBBC had already suggested a timeframe for the council to make the relevant information available.
59. On this basis, the Commissioner accepts the council's position that it has been placed under a disproportionate and unjustified level of disruption and that this impacted on its ability to function.

60. The Commissioner therefore finds that the complainant's information request was manifestly unreasonable and so the council was able to rely on regulation 12(4)(b) of the EIR to refuse to comply with it.

Regulation 12(1)(b) of the EIR – Public interest test

61. While section 14(1) of the FOIA effectively removes the duty to comply with a request, regulation 12(4)(b) of the EIR only provides an exception. As such the EIR explicitly requires a public authority to apply a public interest test in accordance with regulation 12(1)(b) of the EIR before deciding whether to maintain the exception.
62. The Commissioner accepts that public interest factors, such as proportionality and the value of the request, will have already been considered by a public authority in deciding whether to engage the exception, and that a public authority is likely to be able to 'carry through' the relevant considerations into the public interest test. However, regulation 12(2) of the EIR specifically states that a public authority must apply a presumption in favour of disclosure. In effect, this means that the exception can only be maintained if the public interest in refusing the request outweighs the public interest in responding.

Public interest arguments in favour of disclosure

63. The council has told the Commissioner it recognises that disclosure of environmental information helps to promote transparency in public authorities' decision making.
64. The complainant is of the view that the information not being made available during the regulation 14 stage gives clear justification to make the requests that she has to ensure information is disclosed to the public. And had this been done already by the council, then it would not be in the position of receiving these requests, as there would have been no need to make them.

Public interest arguments in maintaining the exception

65. The council considers the burden of the requests received overrides its duty to comply with the request in question, as it is disproportionately diverting the clerk away from her normal duties which is having a detrimental impact on ensuring proper administration of the council and that it is in the public interest that the council is able to conduct its other daily functions.
66. It accepts and acknowledges that mistakes were made, but since the HBBC recommendations following the Regulation 14 consultation in January 2021, it says that it has updated its website accordingly.

Conclusion

67. The Commissioner accepts that there is a strong interest in disclosure of environmental information in general as it promotes transparency and accountability for the decisions taken by public authorities relating to environmental matters.
68. The Commissioner recognises the complainant's reasons for making the requests as being legitimate, in terms of ensuring the council are conducting the correct process and that it is transparent and open about how decisions are being made in relation to the NDP.
69. The Commissioner also has to consider that at the time the request was made, the HBBC had already given a seemingly reasonable viable process and timeframe for the council to set about ensuring openness and transparency.
70. The Commissioner has to also consider any burden placed on the council to deal with the amount of correspondence from the complainant. He is of the opinion that the level of correspondence has placed a disproportionate burden on the council and considering that this is a parish council, he has to recognise it has fewer resources than a larger council to deal with high levels of correspondence. The Commissioner is also of the opinion that it is not in the public interest to overburden a council with information requests to the point that this has a detrimental effect on its other public functions.
71. A key question here is whether the public interest in complying with the request is substantial enough to justify the severe impact placed on the council by responding to such a volume of correspondence.
72. The Commissioner has concluded that the public interest in maintaining the exception outweighs the public interest in disclosure of the information for this request as he considers the burden being placed on the council by the aggregated volume of correspondence received from the complainant outweighs the public interest in complying with this request. Therefore the council was not obliged to comply with the request.
73. Regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions. As stated in the Upper Tribunal decision *Vesco v Information Commissioner* (SGIA/44/2019):

"If application of the first two stages has not resulted in disclosure, a public authority should go on to consider the presumption in favour of disclosure..." and "the presumption serves two purposes: (1) to provide the default position in the event that the interests are equally balanced

and (2) to inform any decision that may be taken under the regulations” (paragraph 19).

74. As covered above, in this case the Commissioner’s view is that the balance of the public interests favours the maintenance of the exception, rather than being equally balanced. This means that the Commissioner’s decision, whilst informed by the presumption provided for in regulation 12(2), is that the exception provided by regulation 12(4)(b) was applied correctly.

Other matters

75. The Commissioner wishes to make the point that, whilst the above decision only relates to the request that is the focus of this notice, to the extent that similar factors apply in relation to requests on related subject matter, the analysis in this notice can be taken as giving an indication as to what the Commissioner’s conclusion would be in those other cases.

Right of appeal

76. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

77. 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.
78. 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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