

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

Date: 16 January 2023

Public Authority: City of York Council
Address: West Offices
Station Rise
York
Y01 6GA

Decision (including any steps ordered)

1. The complainant has requested various information relating to a particular road. The City of York Council refused to comply with the requests under regulation 12(4)(b) (manifestly unreasonable requests), regulation 13 (personal information), regulation 12(4)(e) (internal communications), and regulation 12(5)(d) (confidentiality of proceedings) of the EIR.
2. The Commissioner's decision is that the City of York Council was entitled to apply regulation 12(4)(b) of the EIR.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 13 August 2021, the complainant made a request for information from the City of York Council ("the council") in the following terms (only the questions the Commissioner was asked to investigate are shown):

b) Copies of all correspondence between 20 October 2020 and as at the date of your reply (being 9 September 2021), to or from any officer of the Council with any responsibility for any function of the highway authority or the street authority, relating in any way to the adoption (or lack thereof) or any proposal to adopt, and any historic or current maintenance (or lack thereof) or any proposals for and cost of future maintenance of:

i. the Drive;

ii. the Slip Road and / or the Junction; and

iii. Government House Road;

Such correspondence to include all letters, emails, telephone calls and notes of conversations and including both internal correspondence between council officers of any levels of seniority, any correspondence to or from councillors, and any correspondence originating from or being sent to any external recipient(s);

c) Copies of correspondence to owners or occupiers of numbers [redacted] Government House Road inviting them to apply for adoption of Government House Road, all related correspondence, copies of all applications for adoption received from [redacted] Government House Road and confirmation of their rateable value.

d) Copies of all correspondence between 1 January 2018 and as at the date of your reply (being 9 September 2021), to or from any officer of the Council with any responsibility for any function of the highway authority, the street authority or the planning authority, relating in any way to:

i. Potential Installation of a dropped kerb in any part of the Drive or any part of the Property or [redacted] Government House Road;

ii. Access to the garage at number [redacted] Government House Road constructed to the south east of the Drive.

such correspondence to include both internal correspondence between council officers of any levels of seniority, any

correspondence to or from councillors, and any correspondence originating from or being sent to external recipients...

5. The council responded on 19 October 2021 and refused to provide the requested information, citing the following exceptions as the basis for doing so: regulation 12(4)(b) (manifestly unreasonable); regulation 13 (personal information); regulation 12(4)(e) (internal communications); and regulation 12(5)(d) (confidentiality of proceedings).
6. The complainant requested an internal review on 10 December 2021 in which they disputed the application of the exceptions, and stated the council hadn't attributed the exceptions to the individual request questions.
7. The council sent the complainant the outcome of an internal review on 6 January 2022, it upheld its position to rely upon the exceptions previously cited.

Scope of the case

8. The complainant contacted the Commissioner on 11 January 2022 to complain about the way their request for information had been handled. Specifically disputing the application of the exceptions to withhold the information.
9. During the investigation, the council confirmed to the Commissioner that it is applying regulation 12(4)(b) to the entire request, on the grounds that the request is vexatious. The council confirmed that the other cited exceptions also apply.

Background

10. In 2002, a number of properties were sold to a property development company on land that had previously been owned by the Ministry of Defence. A dispute has recently arisen regarding the legal status of the access road (the Road) to these properties.
11. In 2020, the complainant received a notice from the council to remove a "highway obstruction" on part of his driveway.
12. The council claimed it was entitled to issue this notice on the basis that the Road, and the complainant's driveway which formed part of the Road, were adopted as a highway when the land was sold by the Ministry of Defence in 2002.

13. On 26 October 2020, the complainant provided the council with information which he believed contradicted the council's claims.
14. On 2 November 2020, the council advised the complainant it had now received a copy of an adoption certificate dated 29 June 1967, which provided "conclusive evidence" that the Road "is an adopted highway" as defined by section 202 of the Highways Act 1989.
15. The council subsequently determined that the adoption certificate it had received for the Road was ineffective; it had found that as the Road was Crown land, and owned by the Ministry of Defence at the time that the certificate was issued, section 202 of the Highways Act 1989 could not apply.
16. On 16 July 2021, the council then issued a highway adoption certificate which confirmed that following receipt of an application from the majority of residents on 10 May 2021, the Road (which included the complainant's driveway) was now a highway maintainable at public expense.

Reasons for decision

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

17. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose environmental information to the extent that the request for information is manifestly unreasonable. There is no definition of manifestly unreasonable under the EIR, but the Commissioner's opinion is that manifestly implies that a request should be obviously or clearly unreasonable for a public authority to respond to in any other way than applying this exception. The Commissioner has published guidance¹ on regulation 12(4)(b).
18. The Commissioner recognises that, on occasion, there is no material difference between a request that is vexatious under section 14(1) of the Freedom of Information Act 2000 (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 vexatious.

¹ [Manifestly unreasonable requests - regulation 12\(4\)\(b\) \(ico.org.uk\)](https://ico.org.uk/manifestly-unreasonable-requests-regulation-12(4)(b))

19. The term vexatious is not defined in the legislation. In *Information Commissioner vs Devon County Council and Dransfield*² the Upper Tribunal took the view that the ordinary dictionary definition of the word 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 "...manifestly unjustified, inappropriate or improper use of a formal procedure" (paragraph 27). This clearly established that the concepts of proportionality and justification are central to any consideration of whether a request is vexatious.
20. In the *Dransfield* case, the Upper Tribunal 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).

The council's position

21. The council states that the background to the request originates from a long running neighbour dispute. Significant amounts of information have been provided previously by the council as a result of complaints, access to records, FOIA and EIR requests, and in response to an ongoing legal process.
22. The dispute relates to access rights for the occupants of a neighbouring property and the council's obligations relating to planning enforcement and highways responsibilities. It states that the complainant lives in a small cul-de-sac and that much of the request relates to information which will easily identify occupants of the other properties in circumstances where the council does not have the lawful basis to disclose their details and they would have a strong expectation of confidentiality.
23. The council considers it has previously supplied all relevant information to satisfy the public interest matters, and has provided all information relevant to the legal process followed to adopt the Road. The council advised that the adoption of the Road has been through a legal process, including two claims for a Judicial Review, therefore it argues that all

² [Dransfield v Information Commissioner \(Section 50: Jurisdiction\): \[2020\] UKUT 346 \(AAC\) - GOV.UK \(www.gov.uk\)](#)

information in the public and private interest has been supplied via the court process and information requests.

24. The council also considers that release of some of the information identifies neighbours and may cause alarm and distress about their information being disclosed.
25. The council has considered the number, pattern, duration and motive for this request alongside the significant number of previous requests, contact and responses made for what it states are substantially the same matters. It concludes that the contact has been going on over a number of years and all information has been provided to satisfy both the public and legitimate private interest matters.
26. The council provided evidence of contacts from the complainant and his partner. The council identified to the Commissioner 18 cases that it has raised in relation to these contacts, made between January 2019 and the current request date. The contacts relate to EIR requests, Subject Access Requests, complaints to the council and highways, and the claim for Judicial Review relating to the adoption of the road. Many of the 18 cases have resulted in appeal internally or to the Information Commissioner or the Local Government and Social Care Ombudsman ("the LGO").
27. The council states that it accepts that information should be released where it will lead to a greater ability for public understanding, to participate in effective public consultation and to be able to hold the council to account. However, in this case the council considers that all the information to meet these aims has now been provided, that this is a personal interest, and there is no wider public interest in the information being requested. This includes no further interest from any of the other occupants or visitors to the cul-de-sac.
28. The council advised that the lawfulness of the council's decision to adopt the Road has been resolved and the applicant has for a second time had his claim for a Judicial Review dismissed by the High Court. The Commissioner notes that the first and second Judicial Review's were concluded in May 2022, and September 2022. This is after the date of the request, and therefore the judgement wouldn't have been a consideration for the council, however it demonstrates that the legal process was live at the time of the request.
29. The council states that it has already provided all of the information that is in the public interest, therefore responding to this request would mean diverting officers time away from their usual duties. It considers that to spend any amount of time on tasks with no public interest

benefit, is inappropriate for a council officer to do and therefore manifestly unreasonable.

30. The council considers spending time responding to further overlapping and substantially similar requests, would be a disproportionate and unjustified level of disruption with no benefit to progressing matters of public interest.
31. The council advised it has assessed the context, history, nature and likelihood of future requests and has concluded that whilst some of the information being requested may be for different time periods or slightly different information, much of it is for substantially the same information and all information is for a private interest matter only.
32. It concludes that there would be no further benefit achieved in terms of the public interest in responding to this request. All information to satisfy the public interest including how the council deals with adoption of roads, obstructions to the highway, responsibility for maintaining the highway has already been released or is otherwise publicly available.

The complainants position

33. The complainant provided background to this request:
 - The Commissioner previously investigated a related issue (decision notice FS50831447) where the complainant requested evidence that their drive was adopted.
 - The complainant states that the issue of the road adoption has resulted in a boundary dispute with their neighbour.
 - The complainant advises that in April 2021 the council acknowledged that their drive was not an adopted highway. However 5 days before the court hearing for the boundary dispute the council put an adoption notice up adopting their drive.
 - The complainant states that this is against their wishes as they claim it benefits the neighbour by giving access to the land in dispute.
 - The adoption of the road and their drive under S228 (7) Highways Act 1980) occurred on 16 July 2021.
34. The complainant states that he considers that the council's response to the pre-action letter for the judicial review had been selective in terms of the information provided, as some linked emails in a chain appear to be missing.

The Commissioner's view

35. Firstly, the Commissioner would like to highlight that there are many different reasons why a request may be vexatious, as reflected in the Commissioner's guidance. There are no prescriptive "rules", although there are generally typical characteristics and circumstances that assist in making a judgement about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed as vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates them. A commonly identified feature of vexatious requests is that they can emanate from some sense of grievance or alleged wrongdoing on the part of the authority.
36. The Commissioner's guidance emphasises that proportionality is the key consideration for a public authority when deciding whether to refuse a request as vexatious. The public authority must essentially consider whether the value of a request outweighs the impact that the request would have on the public authority's resources in responding to it. Aspects that can be considered in relation to this include the purpose and value of the information requested, and the burden upon the public authority's resources.

The purpose and value of the request

37. Information requests can serve a number of interests and many, as is apparent in this case, will be prompted by the personal circumstances of the requester. For example, their wish to challenge a decision directly affecting them.
38. The Upper Tribunal's findings in the Dransfield case found that when considering value and serious purpose we are concerned with assessing whether there is public interest in disclosure. This means that the requester's private interests in the information carry little weight unless they coincide with a wider public interest.
39. Whilst a request may only serve the private interests of the requester, there will often be an overlap between the private interests of the requester and a wider public interest. In this case however, the Commissioner agrees with the council that the case for a wider public interest is not apparent.
40. It is evident to the Commissioner that the council's actions in regard to the adoption of the Road, and the associated boundary and planning disputes are matters of strong dissatisfaction to the complainant. However it is equally reasonable for the Commissioner to note that the complainant has (and was at the time of the request) followed various routes of appeal to the council and the courts, in respect of the subject matters that the request relate to.

41. The Commissioner also considers that through these various contacts, and EIR requests the complainant has established that there was no documentation to support the council's claim that the Road was adopted. Subsequently the council followed the process to adopt the Road. The Commissioner appreciates that the complainant feels aggrieved in relation to the road adoption.
42. The process of adopting the road has now become a focus for the complainant's information requests. Whilst the Commissioner recognises that this is a new development in the ongoing dispute with the council, he considers that the matter is better addressed through other legal and complaints channels.

The burden upon the Council

43. It is evident to the Commissioner that the complainant's previous information requests, appeals and complaints in relation to the core issue have already placed significant burden upon the council. It is recognised that compliance with the requests under consideration here would, out of necessity, require further public resources to be expended.
44. Considering the nature of the dispute between the complainant and the council, the Commissioner recognises that responding to these requests would be highly likely to generate further related requests and correspondence, thereby placing further burden upon the Council.

The Commissioner's conclusion

45. The Commissioner recognises that the requests relate to a long running dispute between the complainant and the council. It is reasonable for the Commissioner to consider that processes to defend themselves or challenge the council's position, have been available to the complainant particularly in that matters have been referred to the LGO and Courts.
46. There is no compelling evidence available to the Commissioner that suggests that the council's compliance with the requests would conclude the matter.
47. It is also pertinent for the Commissioner to consider that the requests relate to what is a private interest, and there is no evidence available to the Commissioner that suggests compliance with the requests would serve a wider purpose that may provide value to the public.
48. Having considered the limited value of the requests, in conjunction with the burden on the council's resources, the Commissioner has therefore concluded that the council's application of regulation 12(4)(b) of the EIR was correct and therefore the regulation is engaged.

49. The Commissioner must consider whether the required public interest test supports the maintenance of the exception.

The public interest test

50. The test is whether, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
51. There will always be some public interest in disclosure to promote transparency and accountability of public authorities.
52. Considering the information it has previously provided through EIR, complaints and legal processes, the council states that deploying further resources to respond to the request would be disproportionate compared to any public interest in the requested information. Officers would be diverted from performing other duties which are in the public interest, when dealing with the request.
53. The Commissioner accepts the council's case. The Commissioner is therefore satisfied that the balance of the public interest lies in the exception being maintained.
54. In this case, the Commissioner is satisfied that the Council has demonstrated a disproportionate burden would be placed on it and its officers in having to deal with the request and therefore finds that regulation 12(4)(b) of the EIR is engaged.
55. As the Commissioner has found that regulation 12(4)(b) is engaged, he has not needed to consider the other exceptions cited by the council.

Right of appeal

56. 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

57. 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.
58. 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

Janet Wilson
Senior Case Officer
Information Commissioner's Office
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