

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

**Date:** 1 August 2024

**Public Authority:** St Helens Metropolitan Borough Council  
**Address:** Town Hall  
Corporation Street  
St Helens  
WA10 1HP

**Decision (including any steps ordered)**

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1. The complainant has requested information about a piece of land included in the Local Plan. St Helens Metropolitan Borough Council (the Council) cited section 14 (Vexatious request) of FOIA to refuse the request.
2. The Commissioner's decision is that the Council should have considered the request under the EIR. The Commissioner also finds that it was entitled to apply the equivalent EIR exception, regulation 12(4)(b) (Manifestly unreasonable request) to refuse the request.
3. The Commissioner does not require further steps as a result of this decision.

**Request and response**

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4. On 23 January 2024, the complainant wrote to the Council and requested information in the following terms:  
  
"This request for information relates to the issue of supply of electrical infrastructure to the site [reference number redacted]/Bold Forest Garden Village site:

1. At what point in the development of the Local Plan was supply of electricity to the site [reference number redacted]/Bold Forest Garden Village site first considered?
2. How many points of entry are there, at the boundaries of the Bold Forest Garden Village site, for high voltage electrical supply to the site? Where are these points of entry located?
3. Has the possibility of using the land adjacent to the existing substation on Gorsey Lane for electrical infrastructure, been considered by the Council? If so, is it possible to obtain copies of documentation relating to the matter?
4. Has the owner of the land at the point of entry of electrical supply to the Gorsey Lane substation, [name redacted], been consulted on the matter of using his land for electrical infrastructure? Was the issue of electrical infrastructure a reason for including this site in the allocation? Is this documented and, if so, is it possible to obtain copies of the documentation?
5. Has the supply of electricity to the Bold Forest Garden Village, and its necessary infrastructure, been discussed with Taylor Wimpey, who owned the land immediately to the north of the substation on Gorsey Lane at the time of allocation of the site? Is it possible to obtain copies of the communications between the Council and Taylor Wimpey regarding supply of electrical infrastructure?"
5. The Council responded on 18 February 2024. It refused the request, stating it was vexatious and citing section 14(1) of FOIA.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 23 February 2024 to complain about the way his request for information had been handled. The complainant disagreed that the request was vexatious.
7. The analysis below considers:
  - whether the applicable access regime is FOIA or the EIR; and
  - the application of regulation 12(4)(b) of the EIR to refuse the request.

## Reasons for decision

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### Is the requested information environmental?

8. If information falls within the definition of “environmental information” at regulation 2(1) of the EIR, any request for it must be considered under the EIR.
9. Regulation 2(1)(c) of the EIR applies to information on:

“...measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements...”.
10. As the requested information relates to the development of land for housing under a Local Plan, the Commissioner considers that the requested information is information on measures (regulation 2(1)(c)) as they affect the elements of the environment. For procedural reasons, he has therefore assessed this case under the EIR.

### Regulation 12(4)(b) – Manifestly unreasonable request

11. Under regulation 12(4)(b) a public authority may refuse to disclose environmental information if the request for information is manifestly unreasonable. A request may be manifestly unreasonable because of the excessive burden caused by complying with it or because it is vexatious.
12. In this case the Council has argued that the request is manifestly unreasonable by way of being vexatious.

### Is the request manifestly unreasonable?

13. The Commissioner’s guidance on manifestly unreasonable requests<sup>1</sup> clarifies that the test for a vexatious request under the EIR is essentially

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<sup>1</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/regulation-12-4-b-environmental-information-regulations-manifestly-unreasonable-requests/#howdowe>

the same as that under FOIA; the ICO's guidance on section 14(1)<sup>2</sup> defines 'vexatious' as the:

"...manifestly unjustified, inappropriate or improper use of a formal procedure.

(paragraph 27 of the Upper Tribunal's decision in Dransfield<sup>3</sup>)."

14. This clearly establishes that the concepts of "proportionality" and "justification" are central to any consideration of whether a request is vexatious.
15. The Upper Tribunal in Dransfield found four broad themes which were indicators that a request may be vexatious:
  - the burden (on the public authority and its staff);
  - the motive (of the requester);
  - the value or serious purpose (of the request); and
  - any harassment or distress (of and to staff).
16. A useful starting point is to assess the value or purpose of the request before looking at the impact handling the request would have on a public authority.
17. When considering this, the Upper Tribunal in Dransfield asked itself, "Does the request have a value or serious purpose in terms of there being an objective public interest in the information sought?". The public interest can encompass a wide range of values and principles relating to what is in the best interests of society, including, but not limited to:
  - holding public authorities to account for their performance;
  - understanding their decisions;
  - transparency; and
  - ensuring justice.

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<sup>2</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-14-dealing-with-vexatious-requests/>

<sup>3</sup> <https://www.bailii.org/ew/cases/EWCA/Civ/2015/454.html>

18. The complainant says that the request is not vexatious, as he has a legitimate interest in the information he has requested:

"...I have an option to purchase a piece of land which is located adjacent to [location redacted]...Although a planning permission for the land has been dismissed, I retain an interest in its acquisition from [name redacted]...In summary, the question of whether [name redacted]'s land may be needed for electrical infrastructure has been raised by planning officials at St Helens MBC. My purpose in making this FOI request is to establish whether I should retain the option to purchase the land from [name redacted]. I would therefore suggest that my request is justified by my material interest in the matter and I would therefore appreciate an appropriate response from the Council to my request."

19. Clearly, the complainant is pursuing an entirely private interest in making the request. However, the Commissioner recognises that there is a presumption in the EIR that openness is, in itself, to be regarded as something which is in the public interest. The request therefore has some value as regards the public interest in transparency.
20. It is then necessary to weigh that value against the factors which suggest that the request is vexatious.

### **Burden, number of requests, duration**

21. The Council referred the Commissioner to the persistent correspondence and enquiries the complainant had submitted regarding the land allocation in which the piece of land was included. As regards the volume and frequency of his correspondence, it said:

"Since January 2023, [the complainant] has submitted a high volume of information requests, subject access requests, complaints, and correspondence to the council. There is a log of over 30 on the council's customer relationship management system. There is evidence that information supplied to him has been used to make claims about the council which are unsubstantiated. The Local Government Ombudsman has confirmed it will not consider the complaints made by [the complainant] in relation to the land."

22. The Council explained that dealing with his numerous pieces of correspondence was burdensome:

"There is 1 officer who is dedicated to the processing of FOIs. This officer is responsible for co-ordination of responses, formulating responses in some cases and co-ordinating internal reviews. The council relies on staff from wider services to supply relevant information. These staff have existing roles and duties and are not

dedicated to FOIs. In this case, a significant amount of resource from the FOI officer and from the wider services – the Planning Department are being used to respond to the requests. The Planning Department must divert staff away from usual planning business resulting in delays and impacting on the ability of the service to perform effectively. The frequency of [the complainant]'s requests is also causing an additional burden on the FOI officer resulting in lower compliance rates for FOI responses.”

### **Motive**

23. The Council said that the request relates to the inclusion of a particular piece of land within the Local Plan. The Local Plan is the Council's strategic planning document which, amongst other things, sets out site allocations for new housing.
24. The Council said the complainant wishes to buy the land in question and build his own property on it. However, the land's inclusion in the Local Plan means he must first wait until the master planning document has been completed and the land marked suitable for self-build. The Council says the complainant is seeking to have the land removed from the Local Plan, to speed up the process of building his property, and this request is the latest in a long line of correspondence, enquiries and complaints in pursuit of that aim.
25. The Local Plan was adopted by the Council in July 2022 following scrutiny by the Planning Inspectorate. The role of the Planning Inspectorate is to undertake an independent examination of the proposed Local Plan to ensure it meets the tests of soundness, in accordance with national policy.
26. The owner of the land in question has argued that the process for including his land in the Local Plan allocation was not properly followed, and that the land should be removed. The Council said the Planning Inspectorate has formally considered this claim, and dismissed it. It is satisfied that the process was followed correctly and that the land was properly included in the Local Plan.
27. It said it had attempted to resolve matters with both the landowner and the complainant a number of times, but no informal resolution can be reached. It also said the complainant persists in expressing views which it feels are unfair and not supported by the known facts:

“[The complainant] claims that [the landowner] was not consulted on his land being included in the Local Plan. The council has provided evidence that he was. [The complainant] wishes to challenge the development of the Local Plan to try to remove the land from the

Local Plan. The information he seeks via FOI seeks to identify decisions/errors made by the council in the allocation of the land within the Local Plan. As per our conversations with [the landowner], both he and [the complainant] have a view that the council has been corrupt/malicious in the allocation of the land and there is fault. As per council responses, there is no evidence or information that is available relating to any specific wrong-doing of the council.”

### **Distress to staff**

28. The Council acknowledged that the complainant had not been abusive towards its staff, but it said some staff had reported feeling stressed, anxious and overwhelmed by the repetitive and persistent nature of his requests and correspondence, in view of what they felt they had done to try to respond reasonably to his points of concern.

### **Does the value and purpose of the request justify its impact?**

29. The key question to consider is whether the value and purpose of the request justifies the distress, disruption or irritation that would be incurred by complying with it.
30. As set out above, the Commissioner found that the request had some value in terms of transparency for its own sake. However, the cumulative effect of dealing with the complainant’s correspondence is having a burdensome effect on the Council, and particularly on its FOIA service provision to other service users. For any benefit flowing from transparency in one area, there is a potential reduction in transparency in another.
31. The Commissioner also considers that compliance with the request would not resolve the complainant’s concerns and would likely result in further correspondence being sent for it to deal with. This would place a further burden on the Council and its limited resources.
32. The Commissioner notes that the land in question has been found to have been properly included in the Local Plan. While the complainant may find this frustrating, submitting speculative requests for information on the chance they might reveal faults in the process, is not an appropriate use of the legislation. The Commissioner notes that, in particular, parts of parts (1) and (4) of the request seem to try to identify other weaknesses in the process.
33. As regards the impact on staff, it is not suggested that the complainant has behaved abusively towards staff. However, he appears entrenched in his view that the inclusion of the land in the Local Plan should be reversed, when its inclusion has been subject to independent scrutiny from the Planning Inspectorate. A request which is the latest in a series

demonstrating persistent or entrenched behaviour can have the effect of harassing staff due to the collective burden they place on those staff.

34. Taking a holistic view of the request, its context and the history of the complainant's dealings with the Council regarding the land in question, the Commissioner is not persuaded that its value and purpose justify the impact on the Council of complying with it. Therefore, he is satisfied that the Council was entitled to regard it as manifestly unreasonable, by way of being vexatious.

### **Public interest test**

35. While section 14(1) of 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 still requires a public authority to conduct a public interest test (in accordance with regulation 12(1)(b)).
36. The Commissioner accepts that public interest factors, such as proportionality and the value of the request, will have already been considered in deciding whether the exception is engaged, and that it is possible to 'carry through' the relevant considerations into the public interest test. However, regulation 12(2) of the EIR 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 complying with it.
37. The Council considers that compiling a response to this request would involve a significant diversion of resources which would not be in the public interest as it may disrupt its response to other service users. It argued:

"There is a responsibility to the public purse to ensure that time and resources of the Local Authority is used to serve the public. Continued communications and requests in relation to this specific piece of land and stemming from a personal interest in the land by an individual is inhibiting Council operations.

- There is extensive information published in relation to the Local Plan.
- There has been extensive information already provided to [the complainant] in relation to the Local Plan with regard to the specific land parcel of which he has a personal interest.
- There is limited wider public interest in knowing granular details from a site developer in relation to the placement of electrical



infrastructure, above and beyond what is already available in relation to the Local Plan and from previous EIR responses.

- The requestor has submitted multiple requests in relation to the land parcel due to a personal vested interest and dispute with the Council.”
38. The Commissioner recognises there is a general public interest in transparency for its own sake. However, he considers that any benefit which would flow from complying with this request is disproportionate to the negative impact it would have on the Council.
39. Having considered both the complainant’s and Council’s arguments the Commissioner is not convinced that providing the requested information would substantially add to any interest outside of the complainant’s personal interests. Furthermore, he notes the volume of information there is in the public domain about the Local Plan.
40. Therefore, taking all the above into consideration, the Commissioner considers that the public interest in maintaining the exception outweighs the public interest in disclosure.

### **Regulation 9 – Advice and assistance**

41. Regulation 9(1) states that a public authority has a duty to provide advice and assistance to a requestor, so far as it would be reasonable to expect the authority to do so.
42. As this request has been refused on the grounds that it was vexatious, the Commissioner considers it would be unreasonable to expect the Council to provide the complainant with advice and assistance on remaking his request. Therefore, no such action is required.

## **Right of appeal**

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43. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

44. 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.
45. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Samantha Bracegirdle**  
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