

Freedom of Information Act 2000 (Section 50) Environmental Information Regulations 2004

Decision Notice

Date: 18 May 2010

Public Authority: Wirral Metropolitan Borough Council
Address: Town Hall
Brighton Street
Wallasey
Merseyside
CH44 8ED

Summary

The complainant made a large number of requests to the council, over a relatively short period of time, for information which related to a planned development in Hoylake, The Wirral, Merseyside. The Council responded to a number of the requests which it had received stating that the requests were vexatious. It therefore refused to respond further to the complainant. On review the council maintained its view that the requests were vexatious and therefore exempt under section 14 of the Act.

The Commissioners decision is that the information which has been requested is environmental information and that the council should have considered its disclosure under the Environmental Information Regulations 2004. It therefore breached Regulation 14 (3) in not providing an adequate refusal notice under the Regulations.

However the Commissioner has also decided that the requests were manifestly unreasonable under Regulation 12(4)(b) and that the council was therefore not under an obligation to respond to them further.

The Commissioner's Role

1. The Environmental Information Regulations (EIR) were made on 21 December 2004, pursuant to the EU Directive on Public Access to

Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR.

The Request

2. The requests relate for the most part to information on the planned development of a hotel which is to be associated with a sailing club in Hoylake, The Wirral, Merseyside. The complainant made a large number of requests to the council over a period of three months which relate to this project. He also made further requests for information about other topics, and had had other correspondence with councillors prior to this period about the same subject. In October however the complainant began to submit requests more frequently. The council initially sought to respond to these requests however it eventually realised that the complainant was continuing to make further requests in spite of its responses to him. It therefore reassessed its position and wrote to the complainant on the 14 January 2009, stating that it refused to respond further as it deemed that the number of requests, when considered in their totality, allowed the council to consider all of them to be vexatious. At that point the council states that it had received in excess of 90 requests between October 2008 and January 2009.
3. The council did not therefore respond to one specific request stating that it was vexatious. Instead it issued a single refusal notice encompassing all unanswered requests relating to the development, refusing to consider the requests further as they it deemed them to be vexatious.
4. On the same day the complainant wrote to the council asking for it to review its decision.
5. The council responded on 17 February 2009. It stated that it was upholding the decision that section 14 applies given the number of requests which had been made and the amount of information which had already been provided (813 pages).
6. On 17 February 2009 the complainant complained to the Commissioner about the council's response to his requests. The Commissioner contacted the council relating to this complaint and some correspondence passed between the parties at this time. However the complainant subsequently withdrew his complaint on 3 March 2009.

7. On 14 March 2009 a further review was carried out which again upheld the council's initial decision for the same reasons.
8. The Complainant then wrote to the Commissioner on 30 April 2009 requesting a decision on the council's refusal to provide him with the information.

The Investigation

Scope of the case

9. On 30 April 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He specifically asked the Commissioner to consider the following points:
 - Whether the information he requested should have been provided to him,
 - Whether the council was able to apply section 14 retrospectively.
10. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

11. The Commissioner had written to the council about the complainant in February 2009. Correspondence had therefore passed between the parties relating to this same issue at that time. That complaint was subsequently withdrawn however a further complainant was made on the same issue on 30 April 2009.
12. On the 17 December 2009 the Commissioner wrote to the council stating that the new complaint had now been allocated and that in his view the council was likely to have dealt with the information under the wrong legislation. His view was that the information was likely to be environmental information and so he asked the council to reconsider the request under the Regulations.
13. On 8 January 2010 the council responded. It expressed concerns that in its previous correspondence with the Commissioner he had not stated that the information was environmental information. It stated

however that if that was the case then it would apply Regulation 12(4)(b) to the requests.

14. On 12 January 2010 the Commissioner wrote back to the council. He asked it to provide a log of the requests which the complainant had made, detailing when each request was received, whether each request had been responded to and the date on which it was responded to. He also asked the council to detail which requests had been deemed vexatious.
15. On 19 January 2010 the Council provided a log of the complainant's requests to the Commissioner.

Analysis

Substantive Procedural Matters

Environmental Information

16. The Commissioner notes that the council initially refused the request for the information under section 14 of the Act. However he considers that the information is environmental information which falls under the scope of the Regulations.
17. The Commissioner's decision is that the information is environmental information falling within Regulation 2(1) of the EIR.
18. Regulation 2(1)(c) provides that –

“environmental information” has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on -

(c) 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’
19. The factors referred to in (a) include -

‘ the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, including wetlands, coastal and marine areas, biological diversity

and its components, including genetically modified organisms and the interaction among these elements'

20. The Commissioner is satisfied that the information falls within the definition of environmental information as provided in Regulation 2(1)(c). The information is plans and information on a planned development of a hotel in Hoylake, on the Wirral. The development of the hotel on the seafront is likely to affect the elements and the factors referred to in (a).
21. Given this, the refusal notice which the council issued breached the requirements of Regulation 14(3), which requires that a public authority that refuses a request to provide environmental information specifies the exception it is relying upon in the refusal notice.
22. He therefore finds that the council breached Regulation 14(3) in that it did not provide an adequate refusal notice within the period specified in Regulation 14. The Commissioner does however accept the council's subsequent application of Regulation 12(4)(b) for consideration on all of the unanswered requests.
23. As the council did not apply Regulation 12(4)(b) to the information until the Commissioner had stated that the information was environmental information then the complainants argument that section 14 was applied retrospectively is irrelevant. The Act does not apply to the information and so the application of section 14 was not correct in any event.

Exceptions

12(4)(b)

24. The Council claims that the information is excepted under Regulation 12(4)(b). Regulation 12(4)(b) is provided in the legal annex to this Decision Notice. It provides an exception to an authority's duty to provide information where a request is manifestly unreasonable.
25. The term "manifestly unreasonable" is not defined in the Regulations. The Commissioner is clear however that the inclusion of "manifestly" in Regulation 12(4)(b) indicates Parliament's intention that, for information to be withheld under this exception, the request must meet a more stringent test than being simply "unreasonable". "Manifestly" means that it must be relatively clear that the request is unreasonable.
26. There is also no single test for what sorts of requests may be manifestly unreasonable. Rather, it is to be judged on each individual

request bearing in mind all of the circumstances of the case. The Commissioner is of the view however that Regulation 12(4)(b) will provide an exception to the duty to comply with a request where that request is vexatious, where it would incur unreasonable costs for the public authority or where responding would be an unreasonable diversion of resources.

27. The first unanswered request which the council considered to be manifestly unreasonable was dated 15 December 2008. The council's decision in relation to this request should therefore have been based upon the circumstances that existed as at this date. The Council also considered that a number of further requests made after 15 December 2008 but before the issue of its refusal notice on 14 January 2009 were manifestly unreasonable. Again the Commissioner considers that only circumstances in existence as at the date of each of the later requests should have been taken into account when deciding if those further individual requests were manifestly unreasonable.
28. However the council took into account the circumstances as at the date of its refusal notice of 14 January 2009 when refusing all of the requests made between 15 December 2008 and 14 January 2009. By that time over 90 requests had been received and it relied on this fact when deciding that all of the complainant's requests were vexatious.
29. In reaching his own decision the Commissioner has firstly considered whether the circumstances as at the date of the request of 15 December 2008, were sufficient to mean that this request was manifestly unreasonable. In considering the application of regulation 12(4)(b) to this request he has disregarded any circumstances (such as the receipt of further requests) that only arose after this date. He has then gone on to consider the application of regulation 12(4)(b) to later requests made after 15 December 2008.

The request of 15 December 2008

30. Following the considerations set out in paragraph 26 above the Commissioner has firstly considered whether the request is vexatious. If it is then this is a relevant factor in his consideration as to whether the request is manifestly unreasonable under the Regulations. In his Awareness Guidance no. 22 'Vexatious and repeated requests' published 3 December 2008 - the Commissioner states that the following questions can aid a decision as to whether a request is vexatious or not:

- Could the request fairly be seen as obsessive?
- Is the request harassing the authority or distressing to staff?

- Would complying with the request impose a significant burden in terms of expense and distraction?
 - Is the request designed to cause disruption or annoyance?
 - Does the request lack any serious purpose or value?
31. The Commissioner has taken into account these criteria when considering the application of the exception to the information. It is important to note however that the ultimate decision on this case is based upon all of the circumstances of the case rather than simply a bald application of the criteria considered herein. He also points out that many of the arguments which are considered within the different criteria below are also equally applicable and relevant to the other criteria.
32. When determining whether a request should be deemed vexatious, the Commissioner is mindful that the history and context of the issue will be considered, along with one or more of the above factors. In certain cases, a request may not be vexatious in isolation but when considered in context it may form a wider pattern of behaviour that makes it vexatious. Nevertheless, the Commissioner recognises that it is the request and not the requestor that must be vexatious in order for the exception to apply.

Is the request obsessive?

33. In his Awareness Guidance on the subject of vexatious requests, the Commissioner acknowledges that obsessive requests are usually a very strong indicator that a request is vexatious. When trying to establish whether a request may be considered obsessive, the Commissioner's guidance states that:
- "Relevant factors could include the volume and frequency of correspondence, requests for information the requester has already seen, or a clear intention to use the request to reopen issues that have already been opened and debated."
34. The council has provided the Commissioner with a log of the requests which the complainant has made to it. At the time that the first request was deemed to be vexatious the council had received 18 requests from the complainant between October and December 2008. This was also the 7th request which had been received within a period of 11 days. Many of these requests were multi-faceted or had associated correspondence, either checking facts, asking questions or asking for specific links to information on the council's website. The Commissioner has considered the nature and pattern of the requests made up until

15 December 2008 and considers that responding to this request was also likely to generate further correspondence from the complainant.

35. The Commissioner also notes the complainant's statements in his request for the council to review its decision. In that letter he states:

"The number of requests made over the short period of time October 2008 to current day, 14 January 2009 is substantial and would have exceeded the number received (over 90) if I had not paid due regard to staff resources and effort required to respond. At the October West Wirral Area Forum, Cllr Watts joked (?) about the 132 emails that he and other Elected Members representing local wards and Cabinet and Mr Mortimer had received from me. My seeking of information had not until that meeting been specifically directed, more of a scatter-gun approach, but I then decided that direct action was required because they, Elected Members and the named officer, are unable or unwilling to assist."

36. He also stated:

"I apologise for repetitious questions due entirely to my receipt system lagging behind my compilation of the history of this Project (currently at 813 pages, growing daily as information is received from concerned parties). The repeated questions do then come to light. I consider an apology as being something else with which to clutter your system and do not continue."

"Of course, I must agree that the human resources needed to process the numerous enquiries of myself and others does take considerable time that distracts Officer from their (not "other" as she states since this is that for what they are paid) duties" and;

"I shall continue to exhume and forensically examine."

37. The Commissioner notes that these comments were made after the council had refused the requests, and that it could therefore be argued that they are not relevant to a consideration of whether the request of 15 December 2008 was vexatious. The Commissioner accepts that the volume of contact the Complainant refers to in the correspondence quoted above had not been reached by 15 December 2008, but notes that the volume of requests had begun to increase by this date. He also considers that the more general comments about using a "scatter gun approach", making further and sometimes repetitious requests before reviewing whether existing responses might render such further requests unnecessary, distracting officers from their duties, and

continuing to “exhume and forensically examine” were evident in the complainants pattern of behaviour up until 15 December 2008. The Complainant is clearly making statements that his intent at the time of his request in December was to continue to make requests to the council indefinitely and it is clear that he made a decision in October 2008 to step-up the level of his “direct action” against the council. The Commissioner is therefore satisfied that the complainant understood but held some disregard for the significant imposition he was placing on the council. In light of the above analysis the Commissioner considers that the request of 15 December 2008 can be fairly seen as obsessive.

Did the request have the effect of harassing the authority?

38. The Commissioner reiterates that, in many cases, there will be an element of overlap between the various vexatious criteria. For instance, where a request is considered obsessive, it will often be the case that it will have the effect of harassing a public authority.
39. The Commissioner considers that the number of requests which had been made over such a short period would clearly have had the effect of harassing council officers seeking to carry out their duties. He also notes (through the admission of the complainant above) that the complainant had been using a scattergun approach to his requests and was making requests for information which in many cases he already held. He also already stated that when the council responded to requests this often generated further correspondence from the complainant, which required further input from the officers concerned. The receipt of that number of requests over a short period of time would have had the effect of harassing officers due to the time it would take to prepare, check and disclose the information to him within the statutory deadline for responding. Although individually some of the requests did not require a great deal of work to be responded to, when considered as a whole the effect would have been a bombardment of requests and correspondence, each with a legal time limit within which to respond.
40. Significantly, whilst the complainant may not have intended to harass or cause distress, the Commissioner must consider whether that was in fact the effect which it had. In his guidance on this issue, the Commissioner states that the “focus should be on the likely effect of the request (seen in context), not on the requester’s intention. It is an objective test - a reasonable person must be likely to regard the request as harassing or distressing.” Although a complainant’s reasons for making the request may in themselves be reasonable, a request

may therefore still be manifestly unreasonable to the authority because of the effect it has on that authority.

41. The Commissioner notes that it is not purely the number of previous requests which provide evidence that the request is obsessive or harassing in this case. Although the manner in which the complainant engaged with the council was initially polite, non confrontational and not marked by aggressive or improper language it followed a disagreement which he had apparently had with councillors in the October West Wirral Area Forum. It is also clear that, when considered in this context, the complainant was asserting his rights under the Act in a particularly demanding fashion. The Commissioner's decision is therefore that receiving such a large number of requests and correspondence over such a short period would have had the effect of harassing and distressing council officers dealing with his correspondence. Officers would also have felt additionally harassed given the prior communications the council had had with the complainant in the past.

Would responding to the request have imposed a significant burden in terms of the expense and distraction on the authority?

42. The Tribunal in *Welsh v Information Commissioner* (EA/2007/0088) said that whether a request represents a significant burden is "*...not just a question of financial resources but also includes issues of diversion and distraction from other work...*" (paragraph 27). The Tribunal in *Gowers v Information Commissioner and London Borough of Camden Council* (EA/2007/0114) also said "*...that in considering whether a request is vexatious, the number of previous requests and the demands they place on the public authority's time and resources may be a relevant factor* (paragraph 70).
43. In the case of *Coggins v the Information Commissioner* (EA/2007/0130), the Tribunal found that a "*significant administrative burden*" (paragraph 28) was caused by the complainant's correspondence with the public authority which started in March 2005 and continued until the public authority cited s.14 in May 2007. The complainant's contact with the public authority ran to 20 FOIA requests, 73 letters and 17 postcards. The Tribunal said this contact was "*...long, detailed and overlapping in the sense that he wrote on the same matters to a number of different officers, repeating requests before a response to the preceding one was received...the Tribunal was of the view that dealing with this correspondence would have been a significant distraction from its core functions...*" (paragraph 28).

44. In *Betts v Information Commissioner* (case: EA/2007/0109) the Tribunal also suggested that even if it would not create a significant burden to respond to the material request, it may still be reasonable for a public authority to conclude that compliance would result in a significant burden if in answering that request, it was *"...extremely likely to lead to further correspondence, further requests and in all likelihood, complaints against individual officers..."* (paragraph 34).
45. The Commissioner notes that at the time of the 15 December request it would have been apparent to the council that responding to the complainant's requests generated further requests and correspondence from him. He also notes the complainant's statement that councillors had previously joked about the large number of emails which they had received from him in this past.
46. On the counter side the Commissioner has borne in mind the decision of the Information Tribunal in case *DBERR v The Information Commissioner* (EA/2008/0096) when coming to his decision regarding this part of his considerations. In that case the Tribunal clearly indicated that *public authorities may be required to accept a greater burden in providing environmental information than other information*" (see paragraph 39). Its decision was based upon the clear presumption in favour of disclosure provided in the Regulations and because of the nature of the obligations laid on the UK through The UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the 'Aarhus convention'), and through Directive 2003/4/EC.
47. The Commissioner's view is that on an individual basis, responding to the request to which the claim of vexatiousness was applied would not have imposed a significant burden on the council. However the Commissioner has considered the overall effect on the council of all of the requests and correspondence leading up to the receipt of the request of 15 December 2008, together with the resultant correspondence which had passed between the parties by that date. He has also considered the previous issues which were highlighted in his appeal and considers that it would have been clear to the council that the complainant would continue to make further requests in spite of any responses he received.
48. Taking this into account the Commissioner is satisfied that the request of 15 December 2008 would have imposed a significant burden on the council in terms of the expense and distraction.

Was the request intended to cause disruption or annoyance?

49. The Commissioner has considered whether the intention behind the request was to cause disruption or annoyance. He recognises that the complainant disagrees with a proposal to develop a hotel on land associated with a sailing school and he is therefore seeking information as to how this decision was made and what the development means for his area. In the complainants view the priority for the council was to regenerate the sailing school and the marina area however he feels that this has been 'hijacked' by the plans for the development of a hotel.
50. The complainant has made statements on public forums on these proposals providing his view that the current plans (but notably not development or renewal in itself), are not right for the area. The Commissioner therefore recognises that the complainant has a real and significant reason for making the requests.
51. He also notes that the planning application has raised concerns amongst a significant section of the local community as it is likely to materially alter the landscape around the Marina. Council minutes of meetings have also raised concerns relating to the adequacy of the scrutiny to which these plans have been submitted because of the manner in which the application was considered. It is therefore likely that the intention of the complainant was simply to scrutinise the plans in further detail in order to allow him to provide informed argument objecting to the plans and to hold the council to account for its decisions. Having considered the nature of the requests the Commissioner is not satisfied that there is clear evidence to suggest that the intention of the complainant was specifically to disrupt, annoy or harass officers at the council.

Did the request have no value or purpose?

52. For the same reasons, the Commissioner does not consider that the requests have no value or purpose. The complainant is seeking further information in order to better address his and many of the local community's concerns that the development is not correct for the area.

Conclusion

53. The Commissioner has considered all of the above criteria. The Commissioner recognises the obsessive nature of the request and that the effect of the large number of requests must have been significant on the council's resources. He further recognises that this has had the result of harassing council staff and that it has taken a significant

amount of council resources to respond. The Commissioner is therefore satisfied that Regulation 12(4)(b) is engaged.

The public interest test

54. Regulation 12(1)(b) requires that a public interest test is carried out in cases where Regulation 12(4)(b) is engaged. The test is whether in all the circumstances of the case the public interest in maintaining the exception overrides the public interest in disclosing the information. When considering his decision the Commissioner must also bear in mind the presumption in favour of disclosure provided by Regulation 12(2).

The public interest in disclosing the information

55. The public interest in disclosing the information in this case rests in the general public interest in transparency, accountability and allowing scrutiny of the council's actions and decisions in dealing with the redevelopment project. There has been significant protest to the planned development, together with political argument within the council regarding the decisions that were made. The Commissioner understands that the complainant is not alone in making requests for information relating to this issue. The planned development has therefore caused considerable discussion and debate amongst the local community, as well as in council chambers.
56. Minutes of relevant council meetings subsequent to the decision in this case have highlighted that the approval of the development would have a significant effect on the land and landscape around the area, and that the development may severely affect parking in the area and in the town centre as a whole. It would therefore affect both the public's enjoyment of the bay area and the sailing marina as well as affecting the ease of customer access to traders trading in and around the area. Although this particular meeting occurred after the request had been responded to this document provides evidence of, and outlines some of the underlying tensions in the community relating to this project which were factors in existence at the time that these requests were received.
57. The Commissioner also notes the significance of the debate recorded within council minutes of the Economy and Regeneration Overview and Scrutiny Committee meeting held on the 27 October 2009. The minutes show that the opposition parties felt that the public had not had the opportunity to properly scrutinise the council's decision to go ahead with the development, and that the ability of members of the public to have a proper opportunity to participate in decision making

appears to have been lacking in this instance. Again this particular meeting occurred after the request had been responded to, however it provides evidence of the underlying tensions in the community relating to this project and these were factors in existence at the time that the request was received.

58. He notes that the Scrutiny Committee resolved that:

(1) That this Committee believes consultation has been inadequate, insufficient and not properly reported.

(2) This Committee advises Cabinet to go back to the start in looking at how to replace the Marine Centre with an up to date facility.

(3) This Committee does not believe that the parking problems for public, traders and lake users can be met by the present plans and the effect will be to damage the economy of West Kirby.

(4) This Committee believes that the maximum number of parking spaces should be retained at Dee Lane car park and that the lake users' car park be maintained for the use of the lake users and those associated with them.

(5) Looking at the financial arrangements on offer at the start of the process and the end of the process this Committee believes that the scheme no longer represents value for money nor has it been subject to fair competition.

59. There are therefore very strong public interest arguments in favour of the disclosure of further information on this project, particularly taking into account the aims of the Aarhus Convention, which stresses the importance of access to information to support public participation in environmental decision making.

60. The Commissioner also recognises a clear value in proper scrutiny occurring by members of the public. This is a clear intention behind the legislation. The Commissioner is therefore satisfied that there is a very strong public interest in further information on this development being put into the public domain.

61. The public interest arguments in favour of disclosure have been strengthened by the lack of information which has been disclosed to the public on this issue, and on the surrounding political arguments which have confused matters further. As an example of the continued

political debate surrounding this issue in the meeting highlighted in paragraph 57 above the minutes report that members of the public attended with an understanding that the meeting was a “call in” and that their views might be taken into account, however the minutes report that a political decision to withdraw the call in had been taken and that this meeting was not therefore to allow members of the public their say. Councillors from 2 political parties walked out from the meeting as they believed that the meeting was politicising the scrutiny committee under which the meeting was being held. The remaining councillors then produced the resolutions shown in paragraph 58 above. The Commissioner has not taken this into account in his decision as this occurred after the refusal of the request has occurred, however he has taken into account that these minutes provide tangible evidence of the tensions and concerns which were ongoing at the time that the request was received by the council.

The public interest in maintaining the exception.

62. Countering the very strong public interest in further information on this project being disclosed, the Commissioner also recognises persuasive arguments in favour of maintaining the exception in this case. This is because of the public interest in protecting the integrity of the Regulations and ensuring that they are used responsibly.
63. The Information Tribunal is concerned that the Act should not be brought into disrepute by setting the threshold for vexatiousness too high. In the case of *Welsh v Information Commissioner* the Tribunal found that:

“...there is a danger that setting the standard of vexatiousness too high will diminish public respect for the principles of free access to information held by public authorities enshrined in FOIA. There must be a limit to the number of times public authorities can be required to revisit issues that have already been authoritatively determined simply because some piece of as yet undisclosed information can be identified and requested...”
(paragraph 26).

Whilst the Commissioner considers that the threshold is not exactly the same for Regulation 12(4)(b) as it is for section 14 the Act he still considers this comment to be relevant to this decision.

64. While public authorities are being encouraged towards goals of transparency and accountability which benefit the public as a whole, it is not the intention of the legislation to require that public authorities tolerate the harassment of their officials by individuals who

demonstrate excessive or obsessive behaviour when seeking information. Neither is it the intention of the legislation to allow requests to cause a disproportionate burden on resources or an unreasonable distraction from the authority's core business functions.

Balancing the public interests

65. The Commissioner recognises a clear value in allowing members of the public to scrutinise the decisions of authorities, particularly where issues of planning and development are in question. Planning matters dealt with by authorities should in general be as open and transparent as possible. Such principles derive from, and are at the heart of the principle for greater public participation in decision making agreed in the Aarhus Convention.
66. The Commissioner recognises that there appears to have been significant debate regarding the transparency of the decisions which were taken and the scrutiny which the draft plans were put through in the case of this development. He also notes the strong public concerns about the public consultation the plans were put through.
67. However on the counter side the Commissioner recognises that responding to these requests would have created a significant burden on the council. He further considers that requiring the council to continue to respond would disrupt its everyday work, diverting a disproportionate amount of its resources from its core functions.
68. The Commissioner does not therefore consider that it would be reasonable to expect the council to continue to respond to requests on this subject from the complainant in this instance. It is clearly not in the public interest to allow a single individual to overwhelm and monopolise rights to access information by making a barrage of requests. The Commissioner considers that public respect for the principles of free access to information held by public authorities would be diminished were he to find that there is an onus on the authority to continue to respond to the requests in these circumstances.
69. The Tribunal commented in Welsh case at paragraph 21 stated

"...it is possible for a request to be valid if made by one person, but vexatious if made by another, valid if made to one person, vexatious if made to another..."
70. Similarly in the Gowers case at paragraph 29 the Tribunal stated

"...it is not only the request itself that must be examined, but also its context and history".

71. In this case the Commissioner believes that there is a strong public interest in further information on this project being disclosed which would allow the public to scrutinise the council's actions and decisions further. He would therefore highlight to the council that in the absence of another exception applying it would be likely that he would order further information should be disclosed on this project, including some of the information which the complainant has requested in these requests, if that information were to be requested in different circumstances.
72. However in view of the above, the Commissioner considers that in all the circumstances of this case, the public interest in maintaining the exception in Regulation 12(4)(b) for the initial request of the 15 December 2008 outweighs the public interest in disclosing the information.

The later requests made after 15 December 2008

73. The Commissioner has further considered the application of regulation 12(4)(b) to all of the requests which were deemed vexatious by the council. His view is that the arguments in favour of maintaining the exception become significantly stronger with the receipt of each individual further request which is on the same subject and which continues or escalates the pattern of behaviour already in evidence as at 15 December 2008.
74. In light of the above he finds that the additional requests submitted by the complainant and also refused on the grounds of being vexatious in the council's refusal notice of 14 January 2009 were also manifestly unreasonable, and that the public interest in maintaining the exception outweighs the public interest in disclosing the information for these requests.

The Decision

75. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Regulations:
- The council was able to rely upon Regulation 12(4)(b) in order to refuse the information.

76. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- The council breached Regulation 14(3) in that it did not provide a valid refusal notice stating which Regulation it was relying upon in order to refuse the requests.

Steps Required

77. The Commissioner requires no steps to be taken.

Right of Appeal

78. 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
Arnhem House
31 Waterloo Way
Leicester
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

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

Dated the 18th day of May 2010.

Signed

**Lisa Adshead
Group Manager**

**Information Commissioner's Office
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SK9 5AF**

Legal Annex

The Environmental Information Regulations 2004

Exceptions to the duty to disclose environmental information

12. - (1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if -

(a) an exception to disclosure applies under paragraphs (4) or (5); and

(b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

(2) A public authority shall apply a presumption in favour of disclosure.

(3) To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with Regulation 13.

(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that -

(a) it does not hold that information when an applicant's request is received;

(b) the request for information is manifestly unreasonable;

Refusal to disclose information

14. - (1) If a request for environmental information is refused by a public authority under Regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this Regulation.

(2) The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.

(3) The refusal shall specify the reasons not to disclose the information requested, including -

(a) any exception relied on under Regulations 12(4), 12(5) or 13; and

(b) the matters the public authority considered in reaching its decision with respect to

the public interest under Regulation 12(1)(b) or, where these apply, Regulations 13(2)(a)(ii) or 13(3).

The Freedom of Information Act 2000

Vexatious or Repeated Requests

Section 14(1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious