

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

Date: 25 November 2015

Public Authority: Mole Valley District Council
Address: Pippbrook
Dorking
Surrey
RH4 1SJ

Decision (including any steps ordered)

1. The complainant has requested information from Mole Valley District Council ("the council") that relates to a corporate complaint about the council's investigation into a specified address. The council refused to comply with the requests as it considered them to be vexatious under section 14(1) of the Freedom of Information Act ("the FOIA") and manifestly unreasonable under regulation 12(4)(b) of the Environmental Information Regulations ("the EIR").
2. The Commissioner's decision is that the council has correctly refused the requests as vexatious under section 14(1) of the FOIA and manifestly unreasonable under regulation 12(4)(b) of the EIR.
3. He requires no steps to be taken by the council.

Request and response

4. On 9 March 2015 the complainant wrote to the council and asked for 20 points that he raised on 10 February 2015 (as part of seeking a Stage 2 Corporate Complaint decision) to be treated as individual information requests. The full text of these 20 requests is provided in Annex A.

In the same correspondence the complainant also requested the following:

"...what inspections and investigations have been carried out by MVDC looking into the matter of the activities at the above address other

than [redacted name] looking at closed gates as set out in his letter of 23 October 2014..."

5. The council responded on 24 March 2015 and refused the requests under section 14(1) of the FOIA.
6. The complainant subsequently requested an internal review on 18 May 2015. The council provided this on 12 June 2015. It upheld its application of section 14(1) of the FOIA, and confirmed that it was also applying regulation 12(4)(b) of the EIR on the basis that part of the requested information would be environmental.

Scope of the case

7. The complainant contacted the Commissioner on 15 July 2015 to contest the council's refusal of his requests.
8. The Commissioner considers the scope of this case to be the identification of whether the council has correctly refused the requests under section 14(1) of the FOIA and regulation 12(4)(b) of the EIR.

Reasons for decision

Is part of the information environmental?

9. Information is "environmental" if it meets the definition set out in regulation 2 of the EIR. Environmental information must be considered for disclosure under the terms of the EIR rather than the FOIA. Under regulation 2(1)(c), any information on activities affecting or likely to affect the elements of the environment listed in regulation 2 will be environmental information. Part of the requested information relates to planning and building regulations. This can be clearly identified as affecting the land. The Commissioner therefore considers that part of the request should be dealt with under the EIR.

Regulation 12(4)(b) of the EIR and section 14(1) of the FOIA

10. Regulation 12(4)(b) of the EIR states that:

"For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that-
(b) the request for information is manifestly unreasonable;"

11. Section 14(1) of the FOIA states that:

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

12. 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. The Commissioner has therefore considered the extent to which the requests could be considered as vexatious.
13. The Commissioner has recently published new guidance on vexatious requests and for ease of reference, this can be accessed here:
<https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>
14. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. Sometimes, it will be obvious when requests are vexatious, but sometimes it may not. In such cases, it should be considered whether the request would be likely to cause a disproportionate or unjustified level of disruption, irritation or distress to the public authority. This negative impact must then be considered against the purpose and public value of the request. A public authority can also consider the context of the request and the history of its relationship with the requester when this is relevant.
15. 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)) before deciding whether to maintain the exception. 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.

The context of the request

16. The Commissioner has referred to the submissions of both parties in order to understand the context to the request.

17. The complainant initially contacted the council on 29 November 2013 to raise the alleged operation of multiple businesses at a specified address, which the Commissioner understands neighbours the complainant's own. The Head of Service for Planning responded on 15 January 2014 and advised that having undertaken a site inspection he did not consider any enforcement action to be appropriate. The complainant wrote and disputed this on 18 March 2014, to which the Interim Head of Service for Planning responded on 23 October 2014 and confirmed that further to also undertaking a site inspection, he also considered that no action was required. The complainant wrote further to dispute this on 1 December 2014, to which the Interim Head of Service for Planning replied on 8 December 2014 and confirmed that the council's position remained the same.
18. The complainant disputed this again to the council on 20 January 2015, to which to the Customer Services Team Leader provided a stage 1 corporate complaint response on 30 January 2015. In this response the council maintained its position in deciding that no enforcement action was appropriate, but acknowledged the delay in the council's earlier response of 23 October 2014. The complainant then wrote to the council on 10 February 2015 and requested a stage 2 corporate complaint response which addressed 20 individual listed points. The Deputy Chief Executive provided the council's stage 2 corporate complaint response on 20 February 2015. In this the council maintained its decision not to take enforcement action, and provided further acknowledgement of the delayed response in 2014.
19. On receiving this stage 2 corporate complaint response, the complainant wrote again on 9 March 2015 and specified that he wished the 20 individual points raised on 10 February 2014 to be considered as information requests under the terms of the FOIA; along with one additional request that he outlined in his correspondence.

The complainant's position

20. The complainant has advised the Commissioner that he believes that four businesses may be operating from the given address, and that multiple breaches of legislation are taking place; including the Planning Regulations, the Building Regulations, and the Health and Safety Regulations. As such the complainant considers that the council is incorrect to not undertake enforcement action.
21. The complainant also suggests that the council's delayed response in 2014 has purposely frustrated his efforts to resolve the matter, and that council officers have failed to fulfil their duties. The requests for information have been made in an effort to force the council to be transparent about its decision not to take enforcement action.

The council's position

22. The council considers that the majority of the complainant's requests are not valid information requests under the terms of the FOIA or EIR, but instead demands for explanations about the council's management of his corporate complaint. While a minority of the questions do represent valid information requests, there are also some that appear to be statements that do not seek action by the council or access to recorded information.
23. The council considers that, notwithstanding any decision about the validity of each individual request, they are collectively vexatious for a variety of reasons. In particular the council considers that the requests relate to a matter that has already been fully addressed by the council, and that the requests have been made solely to force further engagement by the council on the substantive matter. The council considers that providing a response to the requests under the terms of the EIR or FOIA would be disproportionate, and would not assist in resolving the substantive matter to the complainant's satisfaction. This is because any continued dispute of the council's position would need to be referred to the Local Government Ombudsman ("the LGO"). As such, the council considers that providing a formal response under the FOIA and EIR would place a burden upon public resources that is not justified by any outstanding public interest.
24. The council has also referred the Commissioner to the accusations contained in the request, and to what it considers to be an abusive or aggressive tone taken by the complainant when referring to council officers.

The Commissioner's analysis

25. 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 wrong-doing on the part of the authority.
26. The Commissioner's guidance has emphasised 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 providing 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

27. Having carefully reviewed the correspondence between the complainant and the council, the Commissioner has identified that the 21 requests relate specifically to the corporate complaint made by the complainant. This corporate complaint relates to a decision by the council not to take enforcement action in respect of a planning and building concerns raised by the complainant, alongside the level of service provided by the council to the complainant in responding to his correspondence.
28. The Commissioner is aware that the planning concerns have already been the subject of review by two successive Heads of Service for Planning. The decision not to take enforcement action, as well as the level of service provided by the council, was subsequently considered by the Customer Services Team Leader at stage 1 of the corporate complaints process, and then by the Deputy Chief Executive at stage 2. In both responses the council reviewed and confirmed its decision to not take enforcement action, and addressed service issues raised by the complainant. The council advised the complainant in its stage 2 response that any further appeal against the council's position would need to be referred to the LGO.
29. While the Commissioner appreciates that the matters addressed in the corporate complaint remain important to the complainant, it is evident from independently reading the information requests that they are specifically connected to aspects of the corporate complaint and the grounds that it has been made on. It is clear to the Commissioner that any appeal against the council's position would need to be referred to the LGO. It is also clear that the way in which the information requests have been submitted, where previous 'points' have been resubmitted as information requests, suggests that they have been made in an effort to force the council to further engage with the complainant after the Deputy Chief Executive provided the council's final position. This is particularly evidenced in the complainant's request for internal review on 18 May 2015, where he states "*I am dissatisfied with the handling of my FOIA request by MVDC and I would ask you to carry out an internal review of my requests. I would particularly ask you to examine the lack of enforcement by MVDC with regard to my complaints to your Authority*". The Commissioner considers that using the information rights provided by the FOIA and EIR in such a way represents a clear misuse of those access regimes.

30. Based on these factors, the Commissioner has concluded that there is limited public value inherent within the requests.

The burden upon the council

31. Whilst the Commissioner recognises that a majority of the requests are unlikely to be valid information requests for the purposes of the FOIA or EIR (as accepted by the council), it is clear that those that are valid relate expressly to the corporate complaint; which as identified would need to be referred to the LGO (or other relevant public authority) to be appealed further.
32. The Commissioner has concluded that whilst responding to the complainant's valid requests may entail only a moderate burden, it is clear in the circumstances that there is extremely limited value in this being undertaken. The Commissioner also considers it reasonable to conclude that doing so would result in further information requests or correspondence, which would further divert public resources.

The public interest test

33. Regulation 12(1)(b) of the EIR provides that:

"...a public authority may refuse to disclose environmental information requested if-

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

34. In the circumstances of this case, the Commissioner notes that whilst the council has not clearly defined how it has undertaken a public interest test, it is clear that it has considered public interest factors as part of its decision to apply the exception. Notwithstanding this, the Commissioner will re-consider the public interest test as part of this decision.
35. The Commissioner recognizes that the grounds of the corporate complaint remain important to the complainant, particularly in that it relates to an issue that may directly impact the complainant's own residential property. The Commissioner also considers that there is strong public interest in ensuring that corporate complaints raised by members of the public are fairly and correctly considered by the council with due oversight, particularly where they relate to environmental matters.
36. However there is no clear evidence to suggest that the council has unfairly or incorrectly considered the matters raised by the complainant,

and it is clear that there is a mechanism by which the complainant can appeal the council's response to the LGO. The Commissioner also considers that even should those requests that are valid be responded to, this would not serve to address the complainant's concerns, and would result in the use of public resources but without any resultant public value.

37. Having considered the limited public value of the request in conjunction with the burden on the council's resources, the Commissioner has concluded that the council's refusal under regulation 12(4)(b) of the EIR was correct.

Right of appeal

38. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

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

39. 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.
40. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex A

41. 1) *Why did [redacted name] not reply to my original letter sent to her on 16 January 2015 which was marked Private and Confidential?*
- 2) *Why did [redacted name] not reply to my letter of 18 March 2014 with the attached enclosures when he did not leave the Council's employ until the end of April? There was certainly plenty of time for him to do so.*
- 3) *When I wrote again to [redacted name] on 11 August 2014, not knowing that he had left the Council, why was not a full search carried out to find my letter and enclosures of 18 March 2014?*
- 4) *Why did [redacted name], Strategic Leadership Projects Officer, not look for my letter of 18 March with its enclosures, but instead she asked me to write to [redacted name], Interim Corporate Head of Planning?*
- 5) *When I wrote to [redacted name] on 10 September 2014, with a copy of my original letter of 18 March 2014 which was sent to [redacted name], why did he not instigate a search for the original letter and its enclosures?*
- 6) *Why was a proper hand over from [redacted name] to [redacted name] not carried out?*
- 7) *Why was it necessary for me to write again to [redacted name] on 17 October 2014 as he had not bothered to reply to my letter of 10 September 2014?*
- 8) *Why did it take until 23 October 2014 for [redacted name] to write to me about a matter than I had first raised on 18 March 2014? Why on visiting [redacted address] did he just look at some closed gates without a proper investigation being carried out on my complaint?*
- 9) *Why is it that [redacted name] cannot comment on Health and Safety Regulations, the Equalities Act as stated in his letter of 23 October 2014 nor was he able to comment on the Planning Regulations and Building Regulations as set out in my letter of 18 March 2014?*
- 10) *On what date were the original papers relating to my complaint found? You only state in your letter that it was the intervening period between [redacted name]'s letter of 14 August 2014 and [redacted name]'s response on 23 October 2014!*

11) *I do not consider that the delay in replying to my letter of 18 March 2014 acceptable in any way whatsoever and [redacted name] should have dealt much earlier with my complaint than he did on 23 October 2014. Also, he should have been able to supply a much more thorough response than he did to my complaint. In fact his letters of 23 October and 8 December 2014 leave much to be desired and certainly cannot be considered a full response to my letter and enclosures of 18 March 2014.*

12) *Due to the delays by Mole Valley District Council in dealing with my complaint, which was originally raised with the Chief Executive Officer on 29 November 2013, the activities at [redacted address] have carried on. After 15 months delay when may I expect this matter to be correctly dealt with and the activities at [redacted address] cease?*

13) *Turning to the response dated 15 January 2014 from [redacted name], the information contained in his letter regarding locations in Sutton and Edinburgh were totally incorrect and if anyone had bothered to read my letter of 18 March 2014 and its enclosures they would have seen that the information contained within totally contradicted [redacted name]'s statements and, therefore, why were the activities at [redacted address] allowed to continue up to and including the present day, when I originally raised these matters with the Chief Executive on 29 November 2013. It should be borne in mind that all the information in the enclosures were supplied by the FOUR companies involved.*

14) *Originally all FOUR of these companies operated from an industrial estate in Leatherhead which was [redacted address]. As such all four companies were paying business rates to Mole Valley District Council. I wish to know who in Mole Valley District Council was keeping a watching brief on these four companies. Since as all four companies have now moved to [redacted address] no business rates are being paid and, therefore, there is a loss to Mole Valley District Council. Is anybody within Mole Valley District Council concerned about the loss of income from these four companies which are still trading but from a residential road and are, therefore, paying no business rates whatsoever. These are [redacted businesses] and are all operating from [redacted address] which is a residential area unlike the industrial premises at [redacted address].*

15) *In his letter to me of 23 October 2014 [redacted name] states that "Planning permission is not required to brick a garage opening and the garage may be used for uses incidental to the enjoyment of the dwelling". I have never read such a ridiculous statement by an Interim Corporate Head of Service – Planning in my life and fails to tackle any of the problems whatsoever. What is required is for someone with a little*

bit of intelligence to properly investigate the matters which I first complained about to MVDC on 29 November 2013.

16) Has Planning Permission been granted by Mole Valley District Council for a change of use of a garage from somewhere to keep a car to an office employing 11 to 50 employees as stated in my disclosure E1 sent on 18 March 2014. You will see that [redacted business] employs a staff of 11 to 50 employees who are based at the company's Head Quarters The Studio [redacted address]. All this is taken from the company's own details. The truth of the matter is that The Studio is in fact the garage and far from this being used for uses incidental to the enjoyment of the dwelling as stated by [redacted name] in his letter of 23 October 2014, is in fact being used as an office for the 11 to 50 employees of [redacted business] as well as the other three companies based at this residential address. Please see all the information contained in the enclosures with my letter of 18 March 2014.

17) In my letters of 29 November 2013 and 18 March 2014 I made reference to both the planning regulations and the building regulations. My next question to you therefore is what building regulation approval has been granted by the MVDC to convert the garage for use as an office for 11 to 50 employees. If no permission has been granted why have you allowed this matter to continue since it was first brought to your attention on 29 November 2013?

18) The 11 to 50 employees who work in The Studio (the garage) do not live at [redacted address] but are covered by the Work Place (Health Safety and Welfare) Regulations 1992, the Sanitary Convenience Regulations 1964 and the Equalities Act 2010. It is all these Acts which [redacted name] claims to know nothing about in his letter of 23 October 2014. It should be noted that when I wrote to him on 1 December 2014 I did suggest that he consult with one of his colleagues about these various Acts in the hope that they would be able to enlighten him since these various Acts are all relevant to the activities being carried out at [redacted address].

19) For your information where 11 to 50 employees are employed there should be separate conveniences for men and women and there should be three toilets and three washbasins for the women and three toilets plus two urinals and washbasins for the men. Also, the Equalities Act 2010 requires equal treatment and access for disabled people. What facilities have been made for disabled access to these premises for the external staff that are employed and also what conveniences are available for both men and women. All this was contained in my letter of 18 March 2014.

20) As stated in my letter of 18 March 2014 a full investigation of these four businesses at [redacted address] is required and this was the case when I first wrote to you on 29 November 2013 with particular emphasis on the planning and building regulations as well as the Workplace (Health Safety and Welfare) Regulations 1992. The Sanitary Convenience Regulations 1964 and Equalities Act 2010. When may I expect this full investigation to be carried out and why was this not done sooner, i.e. after my first letter of 29 November 2013.