

Environmental Information Regulations 2004 (the EIR)

Decision notice

Date: 27 September 2016

Public Authority: Leeds City Council

Address: Civic Hall
Calverley Street
Leeds
LS1 1UR

Decision (including any steps ordered)

1. The complainant requested information regarding, amongst other things, building, planning and conservation. Leeds City Council (the council) provided some information but also requested clarification on the information required.
2. During this clarification, the council issued a refusal notice under regulation 12(4)(b) as it considered the request to be manifestly unreasonable because it was of the view that the request was made either under an alias or in concert with another requestor whose similar request had been refused under regulation 12(4)(b) of the EIR.
3. The Commissioner's decision is that the council is able to rely on regulation 12(4)(b) to refuse the request.
4. The Commissioner does not require the council to take any steps.

Request and response

5. On 10 December 2015 the complainant wrote to the council requesting the following information:

"Please provide the following information (under related Acts) applicable to Building Control, Planning, Conservation, Legal and Provision of Information, applicable to officers and members with responsibility for or over these services.

1. *An electronic copy by e-mail [email redacted] of LCC index to all Policies and Procedures applicable to officers and members*

including Rules, Guidance, Codes of Conduct & Codes of Practice, HR Type Rules/procedures and similar whatever the type name.

2. An electronic copy of all these Policies and Procedures, as above, for officers and members, relating to: -

2.1 Complaints and Concerns.

2.2 Provision of Information from LCC on Request

2.3 Monitoring, Reporting and Scrutiny of incidents/occurrences of LA non-compliance with the Law.

You will appreciate that the above has been packaged so as to make identification, retrieval, copying and supply simple and easy for LCC. It would be appreciated, therefore, if this information could be provided ASAP. If you require any further information for this request then please request it by return."

6. The council responded on the 17 December 2015 providing links to several different policies. It also noted that the request was quite broad and was uncertain as to what specific information the complainant may have been after.
7. The complainant requested an internal review on the 21 December 2015 as she did not consider that the council had responded to parts 2.1, 2.2 or 2.3 of the request clarifying that she wanted all documents for these parts of her request.
8. On the same day, the council advised that it was still not clear as to what information was being requested and asked the complainant to clarify the information required.
9. The complainant provided a further email to try and clarify what was required on the 22 December 2015. Then on the 7 January the council advised that it had reasonable concerns that this request had been submitted using an alias by a requestor who has previously been declared as manifestly unreasonable under regulation 12(4)(b) of the EIR and so it was no longer going to correspond on the matter until she provided suitable identification.
10. The complainant responded on the 8 January 2016 providing her address and stated which council she was registered under. On the same day, the council asked that the complainant provide some formal identification such as a copy of her passport or drivers licence.
11. Following further correspondence with the council, it advised the complainant that it considers that she is either the same requestor that

the council has previously applied regulation 12(4)(b) to, or she is acting in concert with this requestor and therefore it is relying on regulation 12(4)(b) of the EIR not to respond further.

Scope of the case

12. The complainant contacted the Commissioner on 6 March 2016 to complain about the council refusing to respond further to the request.
13. The Commissioner considers the scope of the case is to determine whether the council is able to rely on regulation 12(4)(b) of the EIR to refuse to respond further to her request.

Reasons for decision

Regulation 12(4)(b) of the EIR

14. 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 unreasonable' implies that a request should be obviously or clearly unreasonable for a public authority to respond in any other way than applying this exemption.
15. The Commissioner recognises that, on occasion, there is 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 request could be considered vexatious.
16. The term 'vexatious' is not defined in the legislation. In *Information Commissioner vs Devon County Council and Dransfield*¹ 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). The decision clearly establishes that the

¹ UKUT 440 (AAC) (28 January 2013)

concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.

17. 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 previous course of dealings, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).

18. In this case the council considers this request to be manifestly unreasonable because it has determined that the requestor is either acting in concert with or is using an alias of a previous requestor whose request has been refused as manifestly unreasonable and upheld in decision notice FER0615064². And so is trying to get around this previous application of regulation 12(4)(b) of the EIR in order to pursue their requests with the council.

19. With regards to this, the Commissioner has highlighted to the council his guidance on section 14(1) of the FOIA³ at Paragraph 91 onwards, regarding campaigns when considering whether or not regulation 12(4)(b) of the EIR was engaged with this request. He also pointed out at paragraph 92 that the council would need to provide the Commissioner with sufficient evidence as to why it believes the requestor is using an alias or acting in concert with this previous requestor.

20. The council has told the Commissioner that it believes the requestor to be using an alias or acting in concert because on 9 December 2015 the council's Chief Executive received an information request from another requestor asking for 'all relevant LCC guidance, rules and codes which apply to officers conducting or involved in complaint or concern investigations'.

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1624586/fer0615064.pdf>

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

21. Then on the 10 December 2015, the council received this information request which it considers to be similar to the other requestors 9 December 2015 request.
22. The council has told the Commissioner that it sees that the complainant's request was formulated in the same manner as the other requestor, giving the example that the complainant's document name, for the request, was '15-12-10-LCC-FOI-Request.doc', matching the way the other requestor named his own requests such as 15-12-09-LCC-DPA-toRB-let.doc and 15-12-03-LCC-Misleading-Iregularities-Planning-CEO-Let.doc
23. The council has told the Commissioner that the formatting and language of the complainant's request also bears similarities to the other requestor's correspondence with the council. For example, both individuals make reference to 'complaints and/or concerns, guidance, codes, and rules.
24. The council has also pointed out to the Commissioner that, as far as it is aware, it has had no previous contact with the complainant and so it seems unusual to it that a request would be submitted for information regarding the areas of the previous requestors concerns.
25. Lastly, the council has told the Commissioner that the metadata for the complainant's request shows that the author of it has the same first name as the other requestor - and the document was modified to the complainant's name before being sent to the council.
26. The requestor has told the council, during her correspondence with it, her name and address and that this is the first request to the council and has only argued to the Commissioner that this is a reasonable request for information and the exception should not be engaged.
27. The Commissioner on reviewing the council's response and reasons is suitably satisfied with the council's arguments as to why it considers the complainant to be acting in concert or an alias of the previous requestor but sees it more likely that it is not an alias but acting in concert which the council has also suggested is more likely the case.
28. With regards to the request being manifestly unreasonable, the council has stated that it is relying on its reasons given in the previous decision notice FER0615064 as to why it considers this request to be a continuation of unreasonable persistence and placing a significant burden on its officers.
29. The Commissioner has viewed the other request and is satisfied that this request is sufficiently similar/ on the same themes as the decision notice FER0615064 and therefore accepts that the council can rely on the

reasons for finding FER0615064 manifestly unreasonable in applying regulation 12(4)(b) of the EIR to this case.

The public Interest Test

30. Regulation 12(4)(b) EIR is subject to the public interest test. And as with the above analysis the council is relying on its reasons given for the previous decision notice FER0615064.
31. No furthering arguments have been provided by the complainant in this case as to why the information should be released.
32. The Commissioner considers his same reasons and findings from that decision notice also apply to this case and with that finds the public interest lies in favour of the application of regulation 12(4)(b) of the EIR.

Right of appeal

33. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

34. 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.
35. 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