

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

**Decision notice**

**Date:** 12 September 2012

**Public Authority:** Royal Borough of Windsor & Maidenhead  
Council

**Address:** Town Hall  
St Ives Road  
Maidenhead  
Berkshire  
SL6 1RF

**Decision (including any steps ordered)**

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1. The complainant submitted four requests to Royal Borough of Windsor & Maidenhead Council (the Council) concerning the subject of advertisements he wished to display in order to promote his business. The Council has refused to comply with the requests on the basis of regulation 12(4)(b) of the Environmental Information Regulations because it considers them to be manifestly unreasonable. The Commissioner has concluded that the requests are manifestly unreasonable and therefore the Council is entitled to rely on regulation 12(4)(b) as a basis to refuse to answer them.

**Request and response**

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2. On 27 February 2012 the complainant emailed Royal Borough of Windsor & Maidenhead Council (the Council). The complainant's email focused on the issue of advertising banners he wished to display to promote his business; it contained the following four requests for information:

*'We therefore require a copy of the Enforcement Notice subject to non-compliance and a copy of the entry in the Enforcement Register.'*

*We also require a copy of the Town & Country Planning (Control of Advertisements) (England) Regulations 2007 where the entire section of the 16 classes of deemed consent is revoked plus the classes not requiring express nor deemed consent is revoked as Mr Hurrell states deemed consent does not apply to advertisements...*

*... We require the clause in the regulations that states that businesses with forecourts are not allowed any advertising. Considering our prosecution was for Class 6 forecourt signs and the dimensions required for Class 6 we cannot understand how Class 6 deemed consent has now disappeared from the regulations....*

*...We therefore require the section of the regulations that revoked the statement that walls, fences, screens and other structures marking the boundary of a forecourt are included as part of the forecourt. We also require the section of the regulations stating that signage or advertisements cannot be attached to walls, fences, screens of a forecourt facing the passing trade.'*

3. The Council contacted the complainant on 19 March 2012 and explained that a response to his information requests would not be provided in light of the Council's letter to him of 8 March 2012. In this earlier letter the Council had informed him that '*a decision has now been taken to declare you as vexatious. This means that the Council will not respond to any further communication we receive from you on the matter of your advertisement*'.

### **Scope of the case**

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4. The complainant subsequently contacted the Commissioner to complain about the Council's refusal to answer the four requests he had submitted on 27 February 2012.
5. During the course of his investigation the Commissioner established with the Council that its intention, although not explicitly stated in its letter of 19 March 2012, was to refuse the complainant's requests on the basis of section 14(1) of Freedom of Information Act (FOIA) because it believed that the requests were vexatious. The Council informed the Commissioner if it was decided that these requests should have been dealt with under the Environmental Information Regulations (EIR) then it would seek to rely on regulation 12(4)(b) to refuse to comply with them because it considered them to be manifestly unreasonable.

6. For the reasons that are explained below, the Commissioner believes that these requests should have been considered by the Council under the EIR rather than under the FOIA.
7. Therefore the Commissioner's investigation has focused on whether the Council is entitled to refuse to comply with the complainant's requests of 27 February 2012 on the basis of regulation 12(4)(b). The Council has provided the Commissioner with submissions to support its application of this exception. The complainant has also provided the Commissioner with submissions to support his position that the requests are not manifestly unreasonable. The submissions from both parties are referred to in detail below.

## Reasons for decision

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### The Environmental Information Regulations

8. The EIR provide a separate access regime to information which is defined as 'environmental information'. The EIR define environmental information in a number of different ways and in this case the Commissioner believes that the requested information constitutes environmental information by virtue of regulation 2(1)(c). This specific regulation provides that information is environmental if it is information on a measure or activity (such as legislation) and that measure or activity is likely to affect the elements and factors of the environment. In the Commissioner's opinion the requested information on this case is on measures, namely the Town and Country Planning Act 1990 and the Town and Country Planning Regulations (Control of Advertisements) and that these measures are likely to affect the state of the elements of the environment.

### Regulation 12(4)(b) – manifestly unreasonable

9. This regulation of the EIR allows a public authority to refuse to comply with a request if it is deemed to be manifestly unreasonable. The factors that the Commissioner takes into account when determining whether a request is manifestly unreasonable are to a large degree the same factors which he would take into account in determining whether a request is vexatious under FOIA. However, regulation 12(4)(b) is a qualified exception and therefore subject to the public interest test.
10. The Commissioner's guidance on section 14(1) of FOIA makes it clear that it is the request – not the requester – that must be vexatious. The same principle applies when determining whether a request is manifestly unreasonable. A public authority cannot judge a request to be vexatious or manifestly unreasonable just because the individual concerned has

caused problems in the past, albeit that past behaviour of the requester will be relevant if the request continues that behaviour.

11. Furthermore, the Commissioner's guidance explains that deciding whether a request is vexatious is a balancing exercise, taking into account the context and history of the request. The key question is whether the request is likely to cause unjustified distress, disruption or irritation. In particular, public authorities need to consider the following questions:
  - Could the request fairly be seen as obsessive?
  - Is the request harassing the authority or causing distress 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?
12. In order for a request to be correctly refused on the basis of section 14(1), and by implication refused on the basis of regulation 12(4)(b), the Commissioner would expect a public authority to make relatively strong arguments under more than one of these headings.
13. In the circumstances of this case the Council has argued that the complainant's requests are obsessive, were harassing the public authority and causing distress to staff, were causing disruption and annoyance and, in light of the decision made by the court case which is referred to below, did not have any serious purpose or value.

Could the requests fairly be seen as obsessive?

14. In order to support its position that the requests met the various criteria of the Commissioner's guidance upon which it was relying, the Council referred him to the history of its interactions with the complainant regarding the advertisements: it had been in frequent correspondence with the complainant (and his partner) since December 2010 regarding two advertising banners used to promote the complainant's business. Such correspondence began when the Council informed the complainant that the banners in question did not have planning permission and therefore needed to be removed. The Council and complainant continued to exchange correspondence about this matter: the Council's position being that complainant needed to apply for planning permission whilst the complainant was of the view that the advertisements in question were covered by certain exemptions in the Town and Country Planning Regulations (Control of Advertisements) in respect of certain classes of advertisement not requiring consent. The Council ultimately informed

the complainant that he could be prosecuted if the banners continued to be displayed without consent.

15. In January 2012 the Council prosecuted the complainant at Maidenhead Magistrates Court arguing that the banners in question were displayed without the necessary consent of the local planning authority. Furthermore the Council argued that none of the exemptions in the relevant legislation in respect of certain classes of advertisement not requiring consent were applicable. The court found in the Council's favour; the complainant was given a conditional discharge and ordered to pay the prosecution's costs. The Council explained to the Commissioner that following the court case it had contacted the complainant in late January 2012 and invited him to enter in to pre-application discussions with a view to making a planning application for suitable signage for his business.
16. The Council argued that the nature of the correspondence it had received from the complainant (or his partner) in relation to this matter was copious and frequent in nature. Although it did not provide the Commissioner with details of all of its correspondence, by way of example it referred the Commissioner to the fact that between 12 September 2011 (the date at which the Commissioner understands the relevant court summonses were issued) and the court hearing the Council's prosecuting solicitor had received 89 emails from the complainant's partner or the complaint all of which had been sent on behalf of the complainant's company. The Council explained that this was not the only correspondence sent by the complainant; it had two and half lever arch files of similar correspondence.
17. In the Council's opinion, set against this context, i.e. the complainant's previous interactions with the Council in respect of the advertising banners, his requests of 27 February 2012 were evidence that the complainant continued to relentlessly pursue the Council about this matter and were clearly obsessive in nature.
18. In order to support his position that his requests were neither vexatious nor manifestly unreasonable the complainant also referred the Commissioner to this history of his interactions with the Council about this matter. In summary, the complainant explained he had serious concerns with the information (or lack of information) provided to him by the Council; basically the information concerning the Town and Country Planning Regulations (Control of Advertisements) did not accord with the complainant's reading of the legislation. In particular the complainant had concerns that the Council did not understand the 'site concept' where his business was located and how the relevant legislation applied to his business. In the complainant's view he was entitled to rely on the class 6 exemption within the aforementioned legislation which

related to advertisements on forecourts and it was deeply frustrating that Council did not understand the legislation and accept that this exemption applied.

19. The complainant argued that he had not overused the FOI system and moreover that the Council had transferred some reasonable queries into FOI requests. The complainant emphasised that he had not sworn at, harassed, bullied or threatened anyone in the Council despite his dissatisfaction with how this issue had been dealt with.
20. The Commissioner's guidance on vexatious requests explains that the wider context and history of the request is likely to be highly relevant in identifying obsessive requests as it is unlikely that a one-off request could be obsessive. 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 debated and considered. The guidance also notes that obsessive requests are usually a very strong indication of vexatiousness; an obsessive request will typically fall into several other categories as well.
21. The Commissioner recognises that the complainant has a clear and completely understandable interest in being able to display the advertising signage he wants in order to promote his business. His continued contacts with the Council about this issue, including the requests which are the focus of this complaint, are therefore on one level perfectly understandable.
22. However, the Commissioner is also of the opinion that the complainant's requests which are the focus of this case effectively seek to re-open issues that have already been considered. That is to say, the complainant is of the view that he is entitled to a consent exemption in respect of the advertising banners; the Council disagree and believe that the only way in which the advertisements can be legally displayed is with the appropriate planning permission. In the Commissioner's opinion it is vital to note that in January 2012 the Magistrates court found in the Council's favour with regarding the applicability of the relevant legislation. The Commissioner respects the fact that complainant continues to disagree with the Council's interpretation of the legislation. However, in the Commissioner's opinion given the outcome of the court case and the fact that subsequent to the court case the Council has clearly re-iterated its position that in order to display the advertisements the complainant must apply for planning permission, the Commissioner believes that to submit requests which effectively seek to re-engage the Council into discussions regarding the potential applicability of consent exemptions can be described as obsessive. In the Commissioner's view there must be a point where individuals who engage with public

authorities accept the decisions of that authority and any independent body who has verified the position of that authority (in this case the Magistrates court). To continue to attempt to debate the decision with a public authority beyond that point becomes obsessive. In the Commissioner's view in light of the ruling of the Magistrates court this point has been reached. The Commissioner also believes that the volume and frequency of the correspondence received by the Council in relation to this subject matter adds further weight to his finding that the requests are obsessive.

Is the request harassing the authority or causing distress to staff?

23. With regard to this criterion the Council again referred the Commissioner to the frequent nature of the correspondence with the complainant in relation to this matter since December 2010. It explained that the Council had limited resources available to it and whilst the offer of pre-application discussions leading to a planning application for an advertisement remains on offer, it was unable to sustain the considerable correspondence with the complainant which would not lead to a conclusion of this matter to anyone's satisfaction.
24. The complainant argued that provision of the information he had requested, (i.e. primarily government legislation), could not be distressing for the Council to provide. He also referred the Commissioner to the fact that he had conducted himself in a reasonable and appropriate manner (i.e. he had not sworn at, harassed, bullied or threatened anyone in the Council).
25. The Commissioner's guidance on vexatious requests makes it clear that the focus on this criterion should be on the likely effect of the request, 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. Relevant factors under this heading could include the volume and frequency of correspondence, the use of hostile, abusive or offensive language, an unreasonable fixation on an individual member of staff, or mingling requests with accusations and complaints.
26. Whilst the complainant fundamentally disagrees with the Council's position in respect of the advertisements there is no evidence that the tone or language of his correspondence with the Council is in any way hostile, abusive or offensive. Furthermore, the Commissioner does not accept that it would be genuinely distressing to staff at the Council to have to deal with these requests. However, the Commissioner does accept that in light of the context and history of the complainant's interactions with the Council on this matter, these requests could, objectively, be seen as harassing the public authority. The Commissioner's reasoning for reaching this conclusion mirrors his

reasoning in respect of why he has found that the requests are obsessive. That is to say, to submit these requests to the Council despite the decision of the court, and the Council being clear that the submission of a planning application is the only method open to the complainant which could result in the advertising of his business in a location fronting the public highway, has the effect of harassing the public authority.

Is the request designed to cause disruption or annoyance?

27. In order for criterion to be met it is important to remember that it is not simply whether the request *causes* disruption or annoyance to the public authority but whether it was actually *designed* to do so. In its submissions to the Commissioner the Council simply noted that the requests were causing it disruption and annoyance. It did not provide the Commissioner with any evidence which demonstrated that the requests were actually designed to have this effect. The Commissioner has therefore concluded that this criterion is not met.

Does the request lack any serious purpose or value?

28. The Council emphasised that in light of the court decision the requests did not have any serious purpose or value because the potential applicability of any consent exemptions had been determined (and rejected) by the court and the only option open to the complainant was to apply for planning permission for the advertisements.
29. The complainant argued that the requests clearly had serious purpose as the intention of them was to get the promotional advertising on the site that the legislation in his opinion permitted but was being refused.
30. The Commissioner does not dispute that the complainant's intention of securing the promotional advertising he wished for is in itself a serious purpose; it clearly is. However, for the reasons discussed above the Commissioner is doubtful that these requests themselves could be said to have a serious purpose or value. As explained above, in effect they seek to re-open issues with the Council regarding the applicability of consent exemptions whereas, certainly post the court decision, in the Commissioner's opinion the only option that would appear to be realistically available to the complaint was to submit a planning application. To seek to continue to engage the Council in a discussion regarding the applicability of consent exemptions would therefore appear to lack any serious purpose or value.
31. For the reasons set out above the Commissioner is therefore satisfied that the complainants requests of 27 February 2012 were manifestly



unreasonable. The Council is there entitled to refuse to comply with them on the basis of regulation 12(4)(b) of the EIR.

### **Public interest test**

32. However, the exception is qualified and therefore subject to the public interest test. This means that even if the request is manifestly unreasonable, information can only be withheld if the public interest in maintaining the exception outweighs the public interest in disclosing the information.
33. The Commissioner recognises that there is a public interest in ensuring that those who engage with the Council understand the reasons for decisions made by the Council which affect them. As the Commissioner's understands it the requests in question would in the complainant's opinion allow him to further understand the Council's reasoning in respect of the disputed advertisements. However, the Commissioner believes that this interest needs to be considered in the context and history of the complainant's interactions with the Council as discussed above, in particular the fact that the only way in which the complainant could potentially display the banners would be to apply for planning permission. Furthermore the Commissioner believes that there is a compelling public interest in upholding the exception in order to ensure that the resources of the Council, in particular its planning department, are being used most effectively; dealing with requests which have the effect of harassing the Council and have no serious purpose significantly undermines this public interest. The Commissioner is therefore satisfied that the public interest favours maintaining the exception.

## Right of appeal

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34. 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: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

35. 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.
36. 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 .....**

**Alexander Ganotis**  
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