

Reference: FER0664897



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

Date: 3 May 2018

Public Authority: Government Legal Department
Address: One Kemble Street,
London
WC2B 4TS

Decision (including any steps ordered)

1. The complainant has requested information regarding the enforcement of a statutory instrument. The Government Legal Department maintains that the request is manifestly unreasonable and therefore relied on regulation 12(4)(b) not to comply with the request.
2. The Commissioner's decision is that Government Legal Department reliance on regulation 12(4)(b) was correct. She requires no steps to be taken.

Background

3. The Government Legal Department¹ is the government's principal legal advisers. GLD is a non-ministerial department. The Health and Safety Executive² is the body responsible for the encouragement, regulation
-

¹ <https://www.gov.uk/government/organisations/government-legal-department>

² <http://www.legislation.gov.uk/uksi/1998/2451/contents/made>
<http://www.hse.gov.uk/index.htm>

Reference: FER0664897



and enforcement of workplace health, safety and welfare, and for research into occupational risks in Great Britain.

4. The Commissioner understands that the complainant first raised concerns over her neighbour's gas flue terminal with Mid Lothian Council in November 1998 and then raised the same complaint with HSE in November 2011. The complainant was/is concerned with the location of the installation and argues that the responsible authorities had failed to carry out their duties and enforce the statutory regulations.
5. The complainant continued to correspond with HSE throughout 2012 and 2013, asking further questions and requesting information, including details of HSE's formal complaints procedure. HSE continued to respond to the complainant, either with 'normal course of business' correspondence or formally under the EIR.
6. On 23 May 2013 with respect to her neighbour's flue terminal, the complainant wrote to HSE and requested information. The HSE relied on regulation 12(4)(b) not to meet the request. The Commissioner's subsequent decision³ was that HSE had correctly applied regulation 12(4)(b) of the EIR to the request.

Request and response

7. On 22 October 2016, the complainant wrote to Government Legal Department (GLD) and requested information in the following terms:

"Regarding the Gas Safety (Installation and Use) Regulations 1998 NO 2451 (the "Regulations").

 - Please give the name of the public authority responsible for enforcing the above statutory instrument
 - Are British Standards :BS 5440 (flue emissions) enforceable when indicated within regulations (sic)"
8. GLD substantive response, as per its letter to the complainant dated 12 April 2017, was as follows;

³https://ico.org.uk/media/action-weve-taken/decision-notice/2014/950948/fer_0519055.pdf

Reference: FER0664897



- "This is to inform you that the Government Legal Department (GLD) refuses to answer the request you have made on the ground that it is manifestly unreasonable under regulation 12(4)(b) of EIR.."

9. Following an internal review the GLD wrote to the complainant on 2 June 2017. It stated that it upheld its decision.

Scope of the case

10. The complainant contacted the Commissioner on 6 July 2017 to complain about the way her request for information had been handled.

Reasons for decision

11. Regulation 12(4)(b) says that a public authority may refuse to comply with a request if the request for information is 'manifestly unreasonable'.
12. A request can be manifestly unreasonable for two reasons: Firstly where it is vexatious and secondly where the public authority would incur unreasonable costs or where there would be an unreasonable diversion of resources.
13. There is no definition of 'manifestly unreasonable' under the EIR. The Commissioner considers that 'manifestly' implies that the request should 'obviously' or 'clearly' be unreasonable.
14. The Commissioner recognises that, on occasion, there is no material difference between a request that is manifestly unreasonable on vexatious grounds under regulation 12(4)(b) of the EIR and a request that is vexatious under section 14(1) of the Freedom of Information Act 2000 (the "FOIA"). The Commissioner has therefore considered the extent to which the request could be considered as vexatious.
15. There is no definition of the term "vexatious" in the Freedom of Information Act, however the issue of vexatious requests has been considered by the Upper Tribunal in the case of *The Information Commissioner and Devon County Council v Mr Alan Dransfield* (GIA/3037/2011). In the Dransfield case the Tribunal concluded that the term could be defined as "manifestly unjustified, inappropriate or improper use of formal procedure." The Tribunal identified four factors likely to be relevant in vexatious requests:
 - The burden imposed by the request on the public authority and its staff

Reference: FER0664897



- The motive of the requestor
 - Harassment or distress caused to staff
 - The value or serious purpose of the request.
16. The Upper Tribunal's decision established the concepts of "proportionality" and "justification" as being central to any consideration of whether a request for information is vexatious.
17. The key to determining whether a request is vexatious is a consideration of whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear it is necessary to weigh the impact of the request on the public authority against the purpose and value of the request. To do this a public authority must be permitted to take into account wider factors associated with the request, such as its background and history.

GLD's Submissions

18. The complainant's correspondence with GLD started on 22 October 2016 with a letter to the People and Change Director asking questions on the 1998 Regulations and related British Standards. This was followed with letters to other staff dated 14 December 2016 and 10 January 2017, also on the 1998 Regulations, and asking questions on the answers given by HSE to questions on the 1998 Regulations and related Approved Codes of Practise and British Standards.
19. The next letter was to the head of GLD's Health and Safety Advisory Team, on 7 February 2017 asking a series of questions on the 1998 Regulations and British Standards, this in reply to GLD's letter of 7 February 2017 saying that it would not be appropriate for GLD to correspond further with her on this matter. This was followed by a letter of 20 February 2017 addressed to "Complaints; the Litigation Group". GLD replied on 8 March referring to the history and the fact that GLD's HSE clients were no longer prepared to correspond on this subject.
20. GLD said that the correspondence is vexatious in its nature – not hostile or abusive but persistent and repetitive. Attempts by its HSE client to provide substantive answers have been met with further questioning and non-acceptance of the answers given. The complainant's correspondence has generated extensive correspondence causing disruption to the work of civil servants and cost to the taxpayer.
21. The GLD position is that the request is manifestly unreasonable on its face, because it effectively asks the department to circumvent the line taken by its client, the HSE - a line which cannot be divorced from the long history of the matter, including the earlier ICO decision. Going into any further detail would simply reopen the debate.

Commented [DC1]: Can you check this date please as it's after the RFI was made (7 October 2016 according to paragraph 7).

Commented [RL2R1]: Well spotted the RFI was 22/10/16 – DN amended

22. The ICO decision (as per paragraph six above) is clear that HSE has dealt fully with the complainant's requests, and it also holds that the complainant is simply trying to keep her complaint alive by making repeated requests. Her letters to GLD strongly give every appearance of being in the same vein, and, furthermore, given that GLD is in this case simply the repository of information it has been given by HSE, the complainant is not missing out on something that might potentially be disclosable that she has not already been told.
23. The ICO emphasised the importance of "proportionality" arguments in relation to the complainant's correspondence with HSE, finding that her refusal to "let the matter drop" was "a clear indicator of a vexatious request" (para 34.). The HSE material which the complainant is attempting to access through the current request to GLD further demonstrates that she is unwilling to 'let the matter drop' and that her request is vexatious. Whilst of course each request for information has to be considered by the body to whom the request is made, there must come a point where public authorities who are dealing with the same or similar matter or issues are entitled to rely collectively on the ICO's determination, or else a case like this would never come to an end.
24. The GLD also considered the public interest test, as required by Regulation 12(1)(b) EIR. However, it said that the request is only of concern to the complainant and there is no wider public interest in the particular details. And whilst there might generally be a public interest in transparency, that is outweighed here by the public interest in not encouraging a manifestly unreasonable request.

Commissioner's Analysis

25. The Commissioner notes that this appears to be a relatively rare occurrence where a public authority is relying (to a large extent) on regulation 12(4)(b) due to the complainant's contact and behaviour with another public authority on a singular issue. In this case the HSE, which was advised by the GLD regarding issues involving the complainant.
26. The Commissioner recognises that the complainant is asking for similar information from the GLD that she previously sought from HSE. In that previous information request the HSE relied on regulation 12(4)(b) and the reliance was held to be correct by the Commissioner and then the Information Tribunal⁴.

⁴ EA/2014/0065

Reference: FER0664897



27. The Commissioner is of the view that the GLD correctly applied the exception to the complainant's request. In that she accepts that the complainant's request, when set against the context and history of the complainant's previous correspondence on this issue is manifestly unreasonable.
28. The Commissioner considers that the complainant is using the EIR to pursue a grievance she initially had with the HSE that the HSE has not dealt appropriately with her complaint about her neighbour's flue. The Commissioner's and Information Tribunal's subsequent decisions found that her requests were manifestly unreasonable.
29. The Commissioner notes that the complainant's correspondence with GLD started on 22 October 2016 with a letter asking questions on the 1998 Regulations and related British Standards. This was followed with further letters dated 14 December 2016 and 10 January 2017, again on the 1998 Regulations, and also asking questions on the answers given by HSE to questions on the 1998 Regulations and British Standards.
30. The next letter on 7 February 2017 asking a series of questions on the 1998 Regulations and British Standards, this was in reply to GLD letter of 7 February saying that it would not be appropriate for GLD to correspond further with her on this matter. This was followed by a letter of 20 February addressed to "Complaints; the Litigation Group" THE GLD replied on 8 March referring to the history and the fact that GLD's HSE clients were no longer prepared to correspond on this subject.
31. In isolation the request is not without apparent merit. It appears to seek clarification and understanding of the enforcement of a regulation whose purpose is the safety of the public. In reality the complainant is pursuing and campaigning on an issue that (on an objective view) has been addressed by relevant bodies over a period of prolonged interaction between the HSE and the complainant. In this sense, her request can be described as unreasonably persistent and vexatious.
32. For the reasons given above the Commissioner considers that the complainant's request for information is manifestly unreasonable when wider factors associated with the request, such as its background and history are properly taken into account. The Commissioner therefore considers that regulation 12(4)(b) of the EIR has been correctly engaged.
33. Regulation 12(4)(b), in keeping with all EIR exceptions, is subject to the public interest test at regulation 12(1)(b) which states that information can only be withheld if in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosure.

Reference: FER0664897



34. The Commissioner has taken into account the presumption of disclosure under regulation 12(2) of the EIR.
35. The Commissioner has also taken into account the wider public interest in protecting the integrity of the EIR and ensuring that they are used responsibly. However, the request (given its history) is only of concern to the complainant and there is little wider public interest in the particular details.
36. Having considered the relevant factors in this matter, the Commissioner has concluded that maintaining the exception outweighs those in favour of complying with the request. In view of this, the Commissioner finds that the Council is entitled to rely on regulation 12(4)(b) on the basis that the request is manifestly unreasonable.

Right of appeal

37. 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

38. 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.
39. 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

Reference: FER0664897

[Name of signatory]

[Job title of signatory]

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

