

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

Date: 14 May 2024

Public Authority: London Borough of Bexley
Address: Civic Offices
2 Watling Street
Bexleyheath
DA6 7AT

Decision (including any steps ordered)

1. The complainant submitted a number of requests to the London Borough of Bexley (the Council) between July 2023 and March 2024. While it initially responded to some of the complainant's earlier requests, in December 2023 the Council sought to rely on section 14(1) of FOIA (vexatious) to refuse to answer any further requests. The complainant contacted the Commissioner in respect of 10 requests that the Council had refused under section 14(1).
2. The Commissioner has determined that of the outstanding requests, nine fall to be considered under the EIR rather than FOIA. However, he is satisfied that the Council is entitled to refuse to comply with these nine requests on the basis of regulation 12(4)(b) (manifestly unreasonable) of the EIR and that in all circumstances of the requests the public interest favours maintaining the exception. The Commissioner also finds that the Council is entitled to rely on section 14(1) of FOIA to refuse the one remaining request on the basis that it is vexatious.
3. The Commissioner does not require any steps.

Request and response

4. Following the receipt of a number of information requests from the complainant on a broad range of topics, the Council contacted the complainant on 1 December 2023 to notify them that it was relying on section 14(1) to refuse 12 of their requests for information. In its letter, the Council explained that the cumulative volume of the complainant's requests, follow-up queries and complaints to the Commissioner presented an unreasonable burden on its resources. The Council stated that it would consider any future requests from the complainant in relation to the four broad themes established in the case of *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) ("Dransfield")¹ (outlined at paragraph 23 below). The Council notified that, under section 17(6), it would not be issuing the complainant with refusal notices in respect of any future requests it deemed to be vexatious, and that, instead, it would let the complainant know if it intended to process their request.
5. Following receipt of the Council's letter, the complainant submitted two further requests on 9 and 10 December 2023 respectively. The Council responded to each request on 13 December 2023 stating that it did not consider there to be any public interest in the information sought and refused the requests under section 14(1).
6. The complainant submitted a further request dated 27 February 2024. The Council responded on 29 February 2024 refusing the request under section 14(1) and relying on the explanation given in its earlier letter of 1 December 2023.
7. On 29 February 2024 the complainant submitted two further requests. The Council responded on 1 March 2024 refusing the requests under section 14(1) and relying on the explanation given in its earlier letter of 1 December 2023.

¹ <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

Scope of the case

8. The complainant raised 10 complaints with the Commissioner in respect of the Council's application of section 14(1) to refuse 10 separate requests².
9. In order to clarify the current position the Commissioner has listed in the annex at the end of this notice the requests which the Council is refusing to answer on the basis of section 14(1).
10. During the course of his investigation the Commissioner decided that nine of the requests which the Council had refused to answer on the basis of section 14(1), are seeking information about Ultra Low Emissions Zone (ULEZ), road safety and traffic calming projects, and pedestrian safety, and therefore should have been handled under the EIR. The Commissioner will discuss his rationale for this in greater detail below. The Commissioner informed the Council, and the complainant, of this finding during the course of his investigation.
11. In light of this, the Council cannot rely on section 14(1) (vexatious) of FOIA to refuse these requests. Rather, the equivalent provision in the EIR, namely regulation 12(4)(b) (manifestly unreasonable), should be considered.
12. The scope of the Commissioner's role in respect of these complaints is to consider whether the Council is entitled to rely on regulation 12(4)(b) to refuse nine of the requests and section 14(1) to refuse one of the requests.

Reasons for decision

The applicable access regime

² While this decision is issued under reference IC-263567-M3S3, it also concerns nine other complaints under the following references: IC-275932-M7V1, IC-276032-F9Z3, IC-277155-V0F2, IC-277151-K9K6, IC-277149-V3V8, IC-291541-W0T7, IC-277148-Y7K1, IC-292019-B0K2, IC-292023-S1X5.

Requests i) to ix)

13. Regulation 2(1) of the EIR provides a definition of 'environmental information' including information on:

'(a) 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;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affecting the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements'

14. The Commissioner's view is that the information sought at requests i) to ix), as outlined in the annex appended to this decision, matches the type of information described in regulation 2(1)(c) above. For example, information about improvements to existing pedestrian crossings and proposed pedestrian crossing locations will affect the state of the elements as they will require changes to pavement layout and are likely to affect traffic flow, thus having an effect on vehicle emissions. Consequently, the information sought by these requests falls within the definition of 'environmental information' as previously outlined.

15. Similarly, requests for information about the ULEZ are, by definition, requests for information about measures affecting the level of automotive emissions released into the urban environment and therefore will, in all likelihood, fall squarely within the remit of the EIR.

Regulation 12(4)(b) – manifestly unreasonable

16. Regulation 12(4)(b) of the EIR provides an exception from disclosure to the extent that the request is manifestly unreasonable. The exception is subject to the public interest test at regulation 12(1) of the EIR.

17. The term 'manifestly unreasonable' is not defined in the EIR. However, the Commissioner follows the lead of the Upper Tribunal in *Craven v Information Commissioner & DECC*.³
18. In *Craven* the Tribunal found that there is, in practice, no difference between a request that is vexatious under FOIA and one which is manifestly unreasonable under the EIR, save that the public authority must also consider the balance of public interest when refusing a request under the EIR. The Commissioner is therefore guided by the Tribunal's approach to identifying vexatious requests, in addition to his published guidance⁴.

Request x)

Section 14(1) - vexatious

19. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.
20. The word "vexatious" is not defined in FOIA. However, as the Commissioner's updated guidance on section 14(1)⁵ states, it is established that section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.
21. FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such, it is

³ [2012] UKUT 442 (AAC)

⁴ Regulation 12(4)(b) guidance: <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/regulation-12-4-b-environmental-information-regulations-manifestly-unreasonable-requests/>

Section 14 guidance: <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-14-dealing-with-vexatious-requests/>

⁵ <https://ico.org.uk/for-organisations/dealing-with-vexatious-requests-section-14/>

an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.

22. However, the Commissioner recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.
23. The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal (UT) in the leading case on section 14(1), *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) ("Dransfield")⁶. Although the case was subsequently appealed to the Court of Appeal, the UT's general guidance was supported, and established the Commissioner's approach.
24. Dransfield established that the key question for a public authority to ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
25. The four broad themes considered by the Upper Tribunal in Dransfield were:
 - the burden (on the public authority and its staff);
 - the motive (of the requester);
 - the value or serious purpose (of the request); and
 - any harassment or distress (of and to staff).
26. However, the UT emphasised that these four broad themes are not a checklist, and are not exhaustive. It stated:

"all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA" (paragraph 82).

⁶ <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

27. The following analysis considers whether the requests i) to xi) are manifestly unreasonable, and whether the request x) is vexatious.

The Council's position

28. The Council provided the Commissioner with detailed submissions in support of its refusal of the requests. He notes that the Council is seeking to rely on arguments previously provided in support of its application of section 14(1), however it has provided a separate consideration of the public interest test for the requests falling under the EIR. For ease and the reasons given at paragraphs 17 and 18 above, the Commissioner will summarise the Council's position in relation to all of the refused requests, rather than summarising the arguments respective to each access regime.
29. In a letter to the Commissioner dated 26 January 2024 the Council stated that it was invoking section 14(1) on the grounds that the complainant had submitted a high volume of requests over an 18 month period, and that their requests presented an unreasonable burden on resources. The Council also stated that the complainant demonstrated unreasonable persistence in their approach and that their motive behind making their requests was unclear.

Volume

30. The Council provided the Commissioner with a spreadsheet recording all of the requests for information and internal review requests that the complainant had made between April 2022 and October 2023, which numbered 102 in total (87 information requests and 15 requests for internal review). The Council stated that:

"[The complainant] regularly contacted the ICO when he felt his requests had not been dealt with on time or to his satisfaction and, he has gone on to challenge two of the ICO's decisions with the Tribunal Service. Of the cases the ICO has agreed to review, it has not found in his favour on any of the occasions.

It is within this context that we felt it necessary to make [the complainant] vexatious under Section 14(1) of the Freedom of information Act. On 1st December 2023 we wrote to him to advise that we would no longer be dealing with any further requests for information unless we felt they had a genuine public interest.

Of the 87 initial requests received over this period, [the complainant] submitted supplementary questions on 19 of the requests (22% of all first requests) and would quite often engage in further email communication with the officer who dealt with his initial enquiry. We dealt with most of his supplementary requests as follow up questions. However, 15 were also escalated to an internal review.”

31. The Commissioner asked the Council to clarify how many of the requests that the complainant had submitted had been refused under any of the provisions contained within FOIA or the EIR. The Council provided the Commissioner with an updated spreadsheet breaking down its responses to the complainant and stated that it had refused a total of seven requests.
32. The Commissioner notes from the revised spreadsheet provided by the Council that, of the 87 initial requests submitted by the complainant between April 2022 and October 2023, 85 were responded to in full in the Council’s first stage response.

Unreasonable burden

33. The Council took the position that as the complainant’s requests engaged a wide range of business areas within the Council this demonstrated a deliberate attempt to disrupt the wider administration:

“As stated during the period April 2022 to October 2023, [the complainant] submitted 87 initial requests for information. The requests covered multiple service areas ranging from our Mayor’s Office to our Children Social Services. We believe this was deliberately intended to cause a significant burden on multiple officers across a broad range of service areas and did not justify the disruption and distress they created.”

34. The Council stated that it had become difficult to balance the volume of the requests received from the complainant against requests received from other members of the public, formal complaints and Member Enquiries. It also stated that:

“[The complainant] frequently raised service enquiries with our Environmental Services Team and at meetings of the full Council cabinet where all 45 elected Members meet every few months.

During this period, [the complainant] raised 12 questions with Members,

the maximum permitted by a member of the public. Some of the questions he had previously raised under the Freedom of Information Act... it was questionable why he felt this action was necessary and what his motivated [sic] was."

Motive and harassment

35. In respect of the complainant's motive, the Council stated:

"Over the course of 19 months the motivation behind these requests became less clear and felt like a drift away from any original intention to serve a wider public/good and instead appeared just to serve his own self-interest. We feel this is illustrated by the level of detail in some of his requests and supplementary questions like in the case of City Events Limited. These were often very specific and marked by a subtle sense of combativeness and a personal desire to deliberately ask difficult questions for his own self-interest, enjoyment and/or because legislation allowed him.

Due to the number of requests [the complainant] submitted, we feel they have crossed a line into harassment. Three officers alone dealt with 41 of their requests between them during this period. In some cases, they lodged repeated requests about the same subject where there appeared to be little public interest. A case in point is detailed in the appendix concerning the request for information about City Events limited where we received three separate requests about this topic, one of which they asked follow up questions...

We will continue to review any further requests from him as and when we receive them. Those which we feel have no public interest will not receive a reply. However, we will deal with any where we feel a public interest exists in accordance with the requirements of the Freedom of Information Act."

Unreasonable persistence

36. The Council argued that the complainant demonstrated unreasonable persistence in their approach, often making further, follow-up requests following receipt of the Council's initial response. The Council provided a table recording the number of requests received from the complainant each month from April 2022 to October 2023, noting that the average number of requests received per month was six, and stating that:

"... these requests were not in isolation and were often accompanied by follow up enquiries and correspondence with both the Complaints and FOI Team and the officers who had dealt with the original enquiry...

[The complainant]'s requests covered a wide range of service areas in a persistent and deliberate attempt we feel to cause disruption and absorb resources.

His requests covered the following service areas:

1. 0 - 25 SEND
2. Committee Services and Scrutiny
3. Corporate Finance
4. Legal and Democratic Services
5. Environmental Services
6. Health and Wellbeing
7. Highways, Traffic, and Infrastructure
8. Legal Services
9. Leisure Parks and Open Spaces
10. Libraries and Communities
11. Looked after Children, Permanence and Specialist Services
12. Mash, Referral & Assessment, Family Support & Child Protection
13. Mayoral & Member Support & Electoral Services
14. Parking Enforcement (Bexley and Bromley)
15. Planning and Regulation
16. Procurement & Supplier Management
17. Property, Assets and Facilities Management
18. School Expansion, Transport and Admissions
19. Strategic Education Partnership, Improvement & Inclusion
20. Strategic Planning

The ongoing burden [the complainant] placed on council officers and services with the frequency of his requests, follow up questions and email correspondence diverted officer's attention from other crucial service duties."

The complainant's view

37. In correspondence with the Commissioner, the complainant stated that over the past four years they had become "politicised" as a result of dissatisfaction with local councillors and had themselves stood as an independent candidate in the 2022 local elections. They had also developed a close relationship with a political blog called 'Bexley is

Bonkers⁷ which seeks to independently critique the Council's performance. The complainant inferred that it was because of their relationship with 'Bexley is Bonkers' that the Council had designated their requests as vexatious.

38. In response to the Council's position that they submit a large volume of requests, the complainant argued that they did not believe that a "quota" for making information requests exists and that number of requests recorded by the Council was "most certainly inflated". The complainant provided the Commissioner with their own spreadsheet recording their requests between May and November of 2023, and noted that they had made an average of six requests per month.

39. In their letter to the Commissioner the complainant stated that:

"20. The relatively high number of requests also reflects my preference for "small", "single-issue" requests over multi-part "omnibus" ones. Individual requests are typically straightforward, document requests vs. analysis, etc.

21. Overall, I see no merit in the council's "vexatious" claim, and consider it an effort to stifle public scrutiny, whether "just in case" or in response to one of several recent queries, where answers would damage the council's political leadership."

The Commissioner's position

EIR Regulation 12(4)(b)

40. Taking a look at the broader picture, and in respect of the volume of initial requests, internal review requests and follow up queries received, the Commissioner acknowledges that the number – that is, 87 initial requests for information over an 18 month period - is significant. Both the complainant and the Council have provided the Commissioner with spreadsheets recording the volume and frequency of requests, and both have independently arrived at the average frequency of six requests per month. The data submitted by the complainant isn't as extensive or detailed as that submitted by the Council, however the Commissioner

⁷ <https://bexley-is-bonkers.co.uk/blogs/today.php>

finds it interesting that, while the complainant argues that the Council has overinflated the volume of requests they have submitted, their own records appear to corroborate the Council's position.

41. The Commissioner notes from the spreadsheet submitted by the Council that many of the complainant's requests were submitted in close succession, with some requests being submitted on the same day. Some of the requests also contained multiple questions (indeed, the total number of points requiring a response contained in the 10 requests annexed below is 17), and led to follow-up queries. The Council stated that it logged and acknowledged all of the complainant's requests and issued a response to 82% of them within the 20 working day deadline provided by section 10(1) of FOIA. The Commissioner acknowledges the complainant's point that a designated quota for making requests under FOIA or the EIR doesn't exist, and recognises that he cannot make a finding based on solely on the volume of requests submitted without considering their value or purpose. However he finds the number in this case to be particularly high and sufficient for him to consider that regulation 12(4)(b) is engaged in respect of the requests i) to xi) annexed below, taking into account the cumulative burden in answering these requests alongside wider factors in this case, including the value and purpose of the requests. This is in keeping with previous decisions⁸ regarding the volume of requests in relation to the application of regulation 12(4)(b).
42. Turning to the issue of burden, with the exception of request i), which the Council initially refused under section 12(1) (cost of compliance), when considering each of the requests central to this decision in isolation, they appear, on the surface, to be straightforward. Indeed, the Commissioner notes that the Council sought to provide the complainant with some information within scope of request ii) before refusing it at internal review, and has in fact complied with 85 of all of the complainant's requests received between April 2022 and October 2023 in full. However, simply because 85 of the complainant's requests have not engaged any exemptions or exceptions does not necessarily mean that they are, themselves, easy to satisfy. Even in the event that each request was easy to satisfy – and the Commissioner is not saying that

⁸ IC-162209-W1F1, issued 6 February 2023: <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4024097/ic-162209-w1f1.pdf>

they necessarily were - the cumulative effect of 85 easy-to-answer requests received over an 18 month period is still one of considerable burden on officer time.

43. The Commissioner notes that the majority, if not all, of the requests at i) to ix) of the annex below have been directed to the Place Directorate within the Council, and in particular the Highways, Traffic and Infrastructure service area. In examining the data provided by the Council the Commissioner can see that just under half of the complainant's requests (40) submitted between April 2022 and October 2023 were handled by this directorate, however the Council maintains that the complainant has submitted requests engaging a broad range of service areas and that this approach was intended to cause a significant burden on multiple officers.
44. The Commissioner takes the position that there has been a particular burden placed on the Highways, Traffic and Infrastructure team in terms of responding to the complainant's requests, which have averaged around 2 per month over the last two years. In the Commissioner's view it is clearly very difficult to expect a public authority, even one the size of a London Borough Council, to have to consistently devote resources to answering requests from one individual on relatively specific subject matter (ie traffic calming measures and pedestrian safety), while also expecting officers to balance requests from other residents and the day-to-day requirements of their roles. The Commissioner therefore considers the ongoing burden on the Council's resources in the Place department, by the complainant's requests at i) to ix), to be substantial for the purposes of engaging regulation 12(4)(b).
45. The Commissioner has considered the Council's position that the complainant's motivation behind making the requests outlined in the annex does not appear to be guided by an intention to serve a wider public purpose. The Council suggests that the complainant made requests with "a personal desire to deliberately ask difficult questions for his own self-interest, enjoyment and/or because legislation allowed him".
46. The complainant has expressed in their own terms at paragraph 39 above that the Council has designated their requests as vexatious in order to "stifle public scrutiny" and that "answers to some of the requests would damage political leadership". The Commissioner therefore understands that the complainant is, in their view, submitting requests in an effort to scrutinise the Council and its leadership.

47. In correspondence with the Commissioner the complainant explained that he believed the Council had been blocking his requests because of his association with the blog 'Bexley is Bonkers', which appears to be a political blog with a focus on scrutinising the Council. A public authority should not designate a request manifestly unreasonable or vexatious to suppress the release of information that could be considered to be damaging; FOIA and the EIR are, by definition, designed to promote transparency and there aren't any provisions contained within either access regime designed to prevent embarrassment. The Commissioner has not been presented with any evidence that the Council is refusing the complainant's requests in order to suppress dissent because of risk of damage, beyond the statements made by the complainant. As stated at paragraph 43 above, and is evident within the spreadsheet of requests provided by the Council, it has responded to the significant majority of the complainant's previous requests for information on similar themes. The Commissioner therefore cannot arrive at the conclusion that the Council has refused the requests at i) to ix) of the annex because disclosure of that information has the potential to be politically damaging, particularly as this doesn't appear to have been the case for previous requests.
48. The Commissioner notes from the spreadsheet provided by the Council that, over a period of 18 months, the complainant's requests have engaged the nearly the full spectrum of Council services. The Commissioner finds it difficult to decipher the genuine purpose of these requests as they demonstrate such a disparate interest in Council operations that it's hard to picture a scenario in which all of the information already in the complainant's possession would serve a useful function. The Commissioner has therefore considered the possibility of "vexatiousness by drift"⁹ in respect of the complainant's outstanding requests at i) to ix), that is, where the requester has drifted away from their original reason for seeking information.
49. While he acknowledges that they are targeted at one policy area and each of the requests has clear focus, the Commissioner finds that the material locus of each of the requests under the EIR contained in the

⁹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-14-dealing-with-vexatious-requests/how-do-we-consider-burden-motive-and-harassment/>

annex shifts from one to the next. For example, requests iv) to vii) show that over the course of two days the complainant asks for information about pedestrian crossings, traffic calming projects at school sites, local area accessibility and school travel highway schemes. In the absence of a clear line of enquiry connecting each of the requests the Commissioner is unable to determine their respective value in meeting any defined aim. The Commissioner is therefore inclined to agree with the Council that the complainant has submitted scattergun requests simply because they can, rather than because they require the information for a specific purpose.

50. With regard to the Council's arguments that the complainant has been unreasonably persistent, the Commissioner notes that the complainant continued to submit requests for information after the Council refused 12 of their requests as vexatious under section 14(1) on 1 December 2023. Indeed, six of the EIR requests central to this notice were received by the Council following issue of its refusal (requests iv) to ix) in the annex). The Commissioner takes the position that the complainant had chosen to pursue these requests and subsequent complaints in full knowledge that the Council was refusing to respond on the grounds of burden, and that this demonstrates an unreasonable persistence in trying to absorb Council resources. He also believes that, were the Council to respond to the requests contained in the annex, the complainant would be likely to continue their pattern of request making and add further burden.

Public interest test

51. The Council offered the following public interest arguments:

"His nine requests you have asked us to consider under EIR, we feel are a continuation of an ongoing and deliberate attempt to absorb council resources. The requests appear to be self-serving and fail to serve a wider public interest. We feel they are being made solely due to the provisions of the legislation, rather than any genuine desire to enhance the public transparency of our processes and policies. For example, we have not seen any evidence that the information provided to [the complainant] is used elsewhere to enhance further public awareness.

Nor have we seen evidence of [the complainant] using the information to advocate for positive changes to council services, raise awareness about important issues, or contribute constructively to public discussions.

Although he has consistently raised questions at full cabinet with Councillors, we have not seen any evidence of him using the answers to promote policy change or to engage the wider public in the issue. Many of his requests are made without any follow-up action or engagement with the information obtained, which we also feel further reinforces the feeling that the requests were made for his personal benefit only rather than genuine public interest.

There is of course a public interest in providing [the complainant] with the information he has requested to promote openness and accountability. It could potentially allow the public to hold the Council accountable for their actions should our responses be made more widely available. Releasing the information could foster better informed discussions about ULEZ and the pedestrian crossings [the complainant] has requested information on.

Notwithstanding these reasons in support of releasing the information, we feel that for the following reason the interest of the public is better served by not providing the information sought by [the complainant] and maintaining our earlier decision that he be considered vexatious.

In considering the public interest test, we have taken account of the sustained influx of requests from [the complainant] over the past 18 months. There have been recurrent enquiries about the Ultra Low Emission Zone (ULEZ) and pedestrian crossings over this period. Nine separate enquiries have been received about both subjects.

We feel that the repetitive nature of these requests is unlikely to produce any significant new views or improve the information available to the public. We believe it's better to use our service resources for things that can have a bigger and better impact on our service delivery. This helps us be more efficient with our resources and serves the interest of the public greater than dealing with [the complainant]'s information requests.

We also feel these requests are continuing to be an unjustified and disproportionate use of both FOIA and EIR legislation. The nine requests ultimately take our focus away from our main job of providing ongoing services for our residents, which is in the greater public interest than dealing with them."

52. The Commissioner accepts the Council's point that there is a broader public interest in disclosure of the information for transparency and

accountability purposes, and that it could promote dialogue between the Council and residents on the matters highlighted by the complainant in their requests.

53. However, the complainant has not presented the Commissioner with any evidence that the information already provided in response to previous requests under the EIR has been used to mount any constructive challenge to Council policies or procedures. As far as he is aware, the complainant passes the information they receive to the 'Bexley is Bonkers' blog for retention, but that appears to be the extent of its use. While he understands that the complainant may disagree, the Commissioner considers that publishing the responses to information requests on a third party website as a way of critiquing the Council does not equate to servicing the public interest in a meaningful way, particularly when the Council already publishes the majority of its responses to information requests on its own website¹⁰. A practical purpose for the information received in response to a request might be to use it to engage the Council in a dialogue on how it may seek to improve services or infrastructure. The Commissioner also agrees with the Council's position that responding to the complainant's requests for information about ULEZ or pedestrian crossings is unlikely to offer added value to the discourse, considering the volume of information readily available in the public domain.
54. Based on the above analysis, the Commissioner believes that Council was entitled to rely on regulation 12(4)(b) of the EIR to the refuse the nine requests that fall under that regime. In reaching this conclusion the Commissioner would emphasise that it is of course the request(s) and not the requester that is vexatious. The provision at regulation 12(4)(b) (and indeed section 14(1)) cannot be used as blunt instrument to permanently restrict one person's access rights. However, history and context are instrumental in shaping a public authority's approach to requests considered under either of these provisions. In this case, for the requests considered by this decision notice the Commissioner is satisfied that the pattern – and impact – of these requests, allied to their limited value, demonstrate that the requester is not exercising his

¹⁰ <https://www.bexley.gov.uk/about-council/feedback/freedom-information-requests/our-disclosure-log>

access rights in a reasonable or responsible way such that he is satisfied that these requests can be considered vexatious.

FOIA Section 14(1)

55. The Commissioner finds that the Council was entitled to rely on section 14(1) to refuse the request at x) in the annex, for similar reasons as those given above.
56. For context, the Council refused the complainant's earlier request for similar information from 2023 under section 14(1). The complainant contacted the Commissioner in respect of the Council's refusal and the complaint was resolved informally without a decision notice. The Commissioner did not make a finding in respect of the application of section 14(1) to this request. After the complaint was closed, the complainant stated that they had, in fact, submitted the request with incorrect dates, and that they had been seeking copies of any correspondence held that was sent and received between March and August of 2021. The complainant then resubmitted their request with the originally intended date range.
57. As explained to the complainant at the time, the Commissioner considers that there had been ample opportunity for the complainant to raise the date error at the time the request was made and during the investigation process. To expect the Council to process the request again, when considering the existing burden of the complainant's requests on the Council's resources, is unreasonable.
58. Furthermore, in a telephone conversation with the Commissioner the complainant explained that matters of Council procurement had been of interest to them in 2021, however no longer remained a pertinent issue. The Commissioner therefore finds that the request lacks any significant value or purpose sufficient to justify the officer time required to satisfy it.

Procedural matters

FOIA section 17(6) – refusal of request

59. The Commissioner wishes to clarify that the provisions contained within section 17(6) of FOIA¹¹ extend only to future requests that fall to be considered under this legislation.
60. The Commissioner would remind the Council to exercise diligence when assessing any future requests received from the complainant to ensure that the contents are properly considered under the correct access regime before any action is take.
61. With regard to the Council's proposed reliance on section 17(6) for future FOI requests, the Commissioner is not sufficiently persuaded at this stage that it would be 'unreasonable' to expect the Council to issue the complainant with a further refusal notice citing section 14(1). Providing such a notice would provide clarity as to which access regime the Council considers the request to fall under, and indeed clarity as to whether any such new request was indeed one in which the Council considered to be vexatious, bearing in mind the Commissioner's comments at paragraph 54 and in the Other Matters section.

Other matters

62. The Commissioner wishes to make clear that the Council should not interpret this decision as a basis on which to refuse all future requests from the complainant. If the complainant submits a request with clear value and purpose, or one in which the balance of the public interests favours the processing of the request, the Council should treat this request without prejudice.

(5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

(6) Subsection (5) does not apply where –

(a) the public authority is relying on a claim that section 14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

(c) it would in all circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.

Right of appeal

63. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

64. 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.
65. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Jonathan Slee
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Reference: IC-263567-M3S3, IC-275932-M7V1, IC-276032-F9Z3,
277155-V0F2, IC-277151-K9K6, IC-277149-V3V8, IC-291541-W07
277148-Y7K1, IC-292019-B0K2, IC-292023-S1X5.

Annex – list of requests submitted to the Council by complainant

In the interests of both context and ease of reference, the Commissioner has included the complainant's requests in this annex. The requests, and any responses from the Council are listed below in chronological order.

Date of request	Request	Date complaint received by Commissioner & case reference	Council response	Grounds of complaint to the Commissioner
8/7/2023	i) "Can you please supply all emails sent from the Council Leader's work email address between March 1, 2022 and March 1, 2023 that have "ULEZ" or "Ultra Low Emission Zone" in message body or subject, and have "bexley.gov.uk" in recipient's email address"	11/10/23 IC-263567-M3S3	Response issued on 14 August 2023, applying section 12: "We have identified that there are potentially 526 emails that could fall within the scope of your request. We have estimated that it would take us approximately 26 hours (3 minutes x 526 emails) for us to manually review	"From memory, the council asked for money, claiming a significant amount of work involved, and the internal-review request asked them to explain quite why the task was so laborious. ("Search emails by specific keyword, then dump them out" - how long does this take?)

			<p>each email to establish which are fully inside the scope of your request.”</p> <p>Internal review issued on 1 December 2023 refusing request with reliance on section 14.</p>	<p>Then the request was dismissed as "vexatious", one of many and without any case-specific comments, in the council's December "outburst" that is the subject of IC-227068-D5F6.</p> <p>No, not much to add. Perhaps it is worth to point out that that FOI request (a) had no absolutely no "history", i.e. I had never made an even remotely similar FOI request to the council, and also (a) was of considerable public interest, as the ULEZ debate raged on. In terms of the "Dransfield criteria"</p>
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				<p>);, low burden, legitimate motive. Of course, disclosure could have embarrassed the council leader, hence the resistance :)"</p>
28/9/2023	<p>ii) "In response to an earlier FOI request, Highways team advised that the council (presumably, the Highways team) has (a) "an advisor to support schools in updating their School Travel Plans", (b) a "Pedestrian Skills Officer". Can you please provide the list of these two officers' engagements with schools since January 2021. I am looking for a list of format "year / officer (one of the two above) / school"</p>	<p>9/12/23 IC-275932-M7V1</p>	<p>Council response issued on 24/10/23 - some information provided and narrative given: "I am writing to inform you that we have searched our records and some of the information you requested is available at the moment, but we are having some difficulty splitting this into dates/years and officer purpose. I</p>	<p>"The council illegally dismissed several unrelated FOI requests, including this one, as vexatious. (Letter attached - note that 12 initially-dismissed requests are not identified, and the number later changes to 5, one of which is not a FOI request). A couple of the other queries were potentially embarrassing to the council, but this</p>

			<p>have enclosed a copy of the information that is available at present. Since the start of the Covid pandemic, contact with the schools on the travel plan side has been mostly via telephone and emails, and this has continued through to the current date, although personal visit requests would not be declined. On the pedestrian skills side, this remote service has now returned more to face-to-face sessions, mainly held in the spring and summer terms."</p>	<p>less-embarrassing one just "got unlucky"."</p>
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			<p>Internal review request 24/10/23 - " The "aggregation" across the job roles and years covered by the request is unsatisfactory and hard to justify. It is implausible that two employees ("School Travel Plan advisor" and "Pedestrian Skills Officer") do not maintain records of their work"</p> <p>Internal review issued 1/12/23 refusing the request under section 14(1)</p>	
22/11/2023	iii) "Discussing correspondence with the council regarding road-safety concerns around the school, the headteacher of Our Lady of the Rosary Catholic Primary School wrote to me: "We looked at a	9/12/23	Council response issued 1/12/23 – refusing the	As above



	<p>project Wyborne Primary have adopted where the road is blocked off at the beginning and end of the day – Bexley knocked it back". Can you please 1. Confirm that Our Lady of the Rosary Catholic Primary School expressed interest in a "School Streets" proposal. 2. (If yes) Confirm that the proposal was rejected. 3. (If yes) Share any correspondence or documents explaining the decision. "</p>	IC-276032-F9Z3	<p>request under section 14(1)</p> <p>The Council provided clarification of the 12 requests it was refusing on 5/12/23</p>	
9/12/2023	<p>iv) "Can you please share any reports summarising the recent survey of potential pedestrian-crossing locations, and describing proposed action. (No need to re-supply earlier materials related to ADPV2 calculations, unless modified)."</p>	<p>13/12/23</p> <p>IC-277155-V0F2</p>	<p>Council response issued on 13/12/23 refusing the request under section 14(1)</p>	<p>"The council effectively "blacklisted" me, and is dismissing any requests as "vexatious". On Dec 1, I was sent a letter dismissing 12 (unidentified!) FOI requests as vexatious and warning about future FOI requests. (I complained to ICO, but have not yet received reference numbers).</p>

				Now, four more requests have been labelled "vexatious" and dismissed."
9/12/2023	v) "Hello, 1. Can you please supply details of the "traffic calming projects at two school sites in Slade Green" planned as part of the Slade Green Superzone project for Summer term 2023/2024.(See page 11 of https://democracy.bexley.gov.uk/documents/s110819/Item%2007-%20Bexley%20AHSC%20School%20Superzones%20Final.pdf) 2. Were these projects included in the appropriate LIP submission? 3. Have these projects received funding? If yes, how much?	13/12/23 IC-277151-K9K6	As above	As above
10/12/2023	vi) "Hello, 1. Can you please provide details of the planned £100,000 spend recorded as "Local Area Accessibility: small-scale, ad hoc pedestrian access improvements" in Appendix 1, "Transport and road safety program of investment 2023/2024". 2. What months of 2023/24	13/12/23 IC-277149-V3V8	As above	As above

	does the program cover? 3. Which of the items in (1) have been delivered?"			
10/12/2023	vii) "1. Can you please provide details (including locations of works) of the planned £125,000 spend recorded as "School Travel Highway Schemes" in Appendix 1, "Transport and road safety programme of investment 2023/2024". 2. What months of 2023/24 does the programme cover? 3. Which of the items in (1) have been delivered?"	13/12/23 IC-277148-Y7K1	Council response issued 13/12/23 refusing the request under section 14(1)	As above
29/2/2024	viii) "Can I please see any documents and emails regarding flooding concerns at the proposed pedestrian crossing on Yarnton Way, included in the council's 2023 survey of pedestrian-crossing locations."	01/03/24 IC-292019-B0K2	Council response issued 1/3/24 refusing the request under section 14(1)	"Earlier, the council (illegally) banned me from making FOI requests - see [reference redacted], for example. Unfortunately, a decision notice slapping the council's wrist was not issued in that case - the council



				retreated - so the "vexatious" malarkey continues."
29/2/2024	ix) "Can I please have report(s) summarizing the council's 2023 survey of pedestrian-crossing locations."	As above IC-292023-S1X5	As above	Earlier, the council (illegally) banned me from making FOI requests, now FOI requests are being dismissed without any case-specific justification. (See [reference redacted], for example). I really need the ICO to warn the council about this practice in general, not only in this particular case.



FOIA REQUESTS				
27/02/2024	<p>x) "Can you please supply emails, if any, sent by council staff to City Events Ltd or to [name redacted] (owner of City Events Ltd) between March 1, 2021 and August 1, 2021. In your response, please describe how you searched for information, preferably including search screenshots. Please feel free to redact out any amounts. The same request with wrong dates - year given as 2023 instead of 2021, when the Bexley Volunteer Event was held - was earlier submitted (ref. 14749096), and answered. (After being delayed, then dismissed as vexatious, then raised to the ICO, then apparently re-classified as not vexatious). Can you please redo the email search correcting the date filter"</p>	<p>29/02/24 IC-291541-W0T7</p>	<p>Council issued a response on 1 March 2023 refusing the request under section 14(1)</p>	<p>"As noted in the request, it is a corrected version of an earlier one, which became the subject of [reference redacted]. (In December 2023, the council dismissed several FOI requests, including that one, as "vexatious", then backed down when the ICO expressed disapproval - and now labels the same request, with a typo corrected, vexatious!)"</p>