

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

**Date:** 19 September 2017

**Public Authority:** Kirby Muxloe Parish Council  
**Address:** The Parish Office  
Station Road  
Kirby Muxloe  
Leicester  
Leicestershire  
LE9 2EN

**Decision (including any steps ordered)**

---

1. The complainant has requested information relating to the surrender of a lease by the County Council to the Parish Council. The council initially responded providing some information and applying Regulation 12(4)(d) to the information however it subsequently applied section 14(1) of FOIA (vexatious requests).
2. The Commissioner's decision is that the council was not correct to apply section 14 of FOIA to the information as it is environmental information. The council should therefore have considered it under the EIR. The Commissioner has decided however that Regulation 12(4)(b) (manifestly unreasonable) does apply to the information for the same reasons outlined by the council for section 14(1) of FOIA applying.
3. The Commissioner does not require the council to take any steps.

## Request and response

---

4. On 19 April 2016, the complainant wrote to the council and requested information in the following terms:

*"...Electronic copies of the following information.*

- a) *The so- called 'Deed of Surrender' executed by the Parish Council (whether as Trustee or in its own capacity) in relation to the two cancelled leases which had originally been entered into in 2010 with Leicestershire County Council regarding Trust land to be occupied by Kirby Muxloe Primary School.*
  - b) *All related documentation and communication between the Parish Council and other relevant parties which would include the Leicestershire County Council, the Primary School (whether as Academy or as a County Council school), the Land Registry and the solicitors of all parties where applicable.*
  - c) *Details of the costs involved, including an estimate of staff time.*
5. The council responded on 21 April 2016. It provided a copy of one of two Deeds of Surrender, explained that costs were met by the school, and claimed Regulation 12(4)(d) (unfinished documents) as regards part b) of the request.
6. Following further correspondence between the parties the council wrote to the complainant on 23 May 2016. It upheld its position as regards the part b) of the request but it did provide the remaining Deed of Surrender as regards part a). Again it confirmed that the costs were met by the school.
7. However during the course of the Commissioner's investigation the council reconsidered its position. It then wrote to both the Commissioner and the complainant explaining that it now considered the request to be vexatious and applied section 14 of FOIA to the request.

## Scope of the case

---

8. The complainant initially contacted the Commissioner on 6 June 2016 to complain about the way her request for information had been handled. Initially however she had not undergone the internal review provided by the council. She subsequently made a follow up complaint to the Commissioner on 22 August 2016 stating that no response had been received to her request for review.

9. The Commissioner considers that the complaint is that the council did not provide information in response to parts b and c of the request for information.
10. However the council subsequently wrote to the complainant on 26 May 2017 and applied section 14(1) of FOIA (vexatious requests). Given that a public authority can change its position in relation to a request up until, and including at, an appeal to the First Tier Tribunal (Information Rights), the Commissioner has considered whether the council has correctly applied section 14(1) of the FOIA to the above requests for information. If it was correct to apply section 14(1) then there is no requirement for the council to consider the request further.

## Reasons for decision

---

### Is the information environmental information

11. The council initially responded to the complainant by applying Regulation 12(4)(d) to the information. This is an exception under the EIR for unfinished documents. Its subsequently applied section 14(1) of FOIA to declare the request vexatious. The first question for the Commissioner to consider is therefore whether the request falls to be considered under the EIR or FOIA; essentially whether the request is for environmental information or not.
12. The requested information relates to the surrender of a lease by the County Council to the Parish Council. The County Council wished to surrender the lease with the purpose of allowing the land to be further leased by a local school. However the complainant argues that the leases had already been overturned by the Land Registry previously as the leases were in breach of trust.
13. Regulation 2 of the EIR states that environmental information is 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 affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;*
14. The Commissioner considers that the requested information falls within (c) above. It is information on an administrative measure likely to affect the state of the elements of the environment as outlined in (a) above. Effectively ownership of the land was changed with a view to a school then leasing it directly from the Parish Council and using it for its own purposes. This is likely to affect the factors outlined in (a) above.
  15. The application of section 14 of FOIA by the council was not therefore correct as the request should therefore have been considered under the EIR.
  16. The EIR has an equivalent to section 14(1) in the exemption in Regulation 12(4)(b). The Commissioner has therefore considered the application of Regulation 12(4)(b) to the request. The central difference between the two exemptions insofar as this complaint is concerned is that Regulation 12(4)(b) requires a public interest test to be carried out if the exception is engaged. Section 14(1) of FOIA does not. The EIR also provides an explicit presumption towards a disclosure of the information.

Regulation 12(4)(b) – requests that are manifestly unreasonable

17. Regulation 12(4)(b) provides:

*"For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that-*

*(b) the request for information is manifestly unreasonable..."*

18. The Commissioner has issued public guidance on the application of regulation 12(4)(b). This guidance contains the Commissioner's definition of the regulation, which is taken to apply in circumstances where the request is 1) vexatious, or 2) where the cost of compliance with the request would be too great. In this case the Council considers that the request is vexatious. The test under Regulation 12(4)(b) is therefore similar to that under FOIA for vexatiousness, with the addition of a public interest test if the exception is engaged.

19. The Commissioner considers that the inclusion of 'manifestly' in regulation 12(4)(b) indicates Parliament's intention that, for information to be withheld under this exception, the information request must meet a more stringent test than simply being 'unreasonable'. 'Manifestly' means that there must be an obvious or tangible quality to the unreasonableness of complying with the request.
20. The term 'vexatious' is not defined in the legislation. In *Information Commissioner vs Devon County Council & Dransfield*<sup>1</sup>, the Upper Tribunal took the view that the ordinary dictionary definition of the word vexatious 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 the "*...manifestly unjustified, inappropriate or improper use of a formal procedure*" (paragraph 27). The decision clearly establishes that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.
21. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) and harassment or distress of and to staff. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it 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 a previous course of dealings, the lack of proportionality that typically characterise vexatious requests"* (paragraph 45).
22. The Commissioner therefore needs to consider whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to the serious purpose and value of the request.

---

<sup>1</sup> UKUT 440 (AAC) (28 January 2013)

23. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in her published guidance on vexatious requests<sup>2</sup>. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
24. In relation to the serious purpose and value of the request, the complainant provided the Commissioner with the following background information:

*"The Parish Council is the sole trustee of a charity (The Recreation Ground Charity) whose land was originally donated in trust to the Parish Council as a pleasure ground (not playing fields) in 1920. A further piece of land was purchased by the Parish Council outright in 1965 as an open space with permission to build a sports pavilion. A small pavilion was duly built, and that land has been used as a village playing field since then, with two small sports pitches. All this land lies at the very heart of the village and includes public rights of way...*

*...the Parish Council, in November 2010, negotiated separate 25-year leases for two pieces of Recreation Ground Charity land to the Leicestershire County Council (LCC) for use by Kirby Muxloe Primary School, which is situated adjacent to the land. As the Primary School was scheduled to become an Academy in November 2013, the LCC wrote to the Parish Council in early October indicating that they wished to surrender the leases, and seeking that they be transferred to the Academy. However as the leases had recently been revealed to be in breach of trust and were improperly signed, parishioners had already instigated action with the Land Registry, and on this application, the Land Registry closed both leases on 12 November 2013, with the approval of the LCC. Subsequently and separately the Parish Council has been endeavouring to find ways whereby it can again lease the land involved to the Academy for its exclusive use. Initially the Parish Council arranged for lawyers to prepare deeds of surrender of the two leases with the LCC, though it is much more common for it to be the tenant who would prepare such deeds to protect their interests.*

---

<sup>2</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

*In this case the LCC seems to be the beneficiary at the Parish's expense. My underlying interest here is what has motivated and influenced the Parish Council to spend public money inappropriately and what the true costs have been (e.g. legal fees and staff time)."*

25. For its part, the council said that it had not spent any money, and that the costs were fully paid by the Academy.
26. In its submission on the application of section 14(1), the council first explained that it is a relatively small parish of some 3390 residents. It says that three residents are working in concert to disrupt the workings of the council.
27. The council explained that there appears to be a pattern to the activities of the three residents and gave the example that when the annual accounts are published and made available to the public, one of the three sends a long email asking for many items to be copied and then arranges for a third party to collect them. It said that they will not pay the required 20p per sheet for copying but insist on paying 10p per sheet using a previous decision by the Commissioner as justification for this. It said that when they have received the document pack they will ask for a further batch of documents relating to the accounts to be copied and picked up. The council explained that following this, there is often an email and an objection lodged with the external auditor pointing out that in their opinion there are errors with the accounts. It said that this is then followed up with information requests to the council as they seek to gain evidence to support their objections and that inevitably, correspondence to the ICO and/or their solicitor follows, which the council then has to respond to. Audit costs of investigating queries are also passed on to the council.
28. The council commented that two of the three residents have not attended any meetings of either the Parish Council or the Recreation Ground Charity for many years but one does and makes notes or records the proceedings. It said that shortly after the meeting it receives correspondence relating to agenda items that were approved, or just discussed, and there will often be remarks on social media relating to the meeting posted by one of the three residents.
29. The council said that it has received very many information requests from the three residents since 2009 in relation to council and Recreational Ground Charity Business, with 49 received between August 2014 and April 2017. It considers this to be totally out of proportion to a parish of its size. It explained that some of the requests contain a great many pages and that there have been numerous e-mails, as well as letters from their solicitors and the ICO, and that some of the matters

relate to events and legal agreements of many years ago. It said that it has on occasions had to seek independent legal advice both in the form of a solicitor and a Queens Counsel (although the complainant's argue that this was a junior barrister rather than a QC) and that more recently it has had to employ a consultant solely to deal with information requests from the three individuals (who at the time of writing is dealing with seven information requests).

30. The Commissioner is aware from other cases which she is dealing with that the complainant's have also made a complaint to the Commissioner regarding the council's use of this consultant to deal with the FOI requests which they have made. One of the complainants has also made it known that they have made a further request to the council for details of the consultant who has been hired.
31. The council explained that the requests have caused immense stress to parish councillors and in particular the parish clerk who works part time. It said that 2016 was a particularly difficult year as its full time clerk resigned in April and it then had a succession of three part time clerks, two of whom would not take the job on permanently because of the disproportionate impact and stress caused by the information requests on their workload. It informed the Commissioner that its current clerk, who had previously worked as a clerk for another parish council, had never received a request under the FOIA in all the years she had worked there. It said that it has consulted with other parish council's in the area and that some receive two or three information requests per year and others only rarely receive any, which is in sharp contrast to Kirby Muxloe. It also said that it is worthy of note that in the period in which it received 49 requests from the three residents, it received four other requests from four other residents but that they were not in relation to the same matters.
32. It also said that the three residents have made information requests to third party public bodies, relating to the council's business with those public bodies, regarding content that they feel contravenes the law or good practice. The Commissioner can confirm that she has seen evidence of cases with other organisations generated by the complainants which relate to Kirby Muxloe Parish Council or the charitable Trust which it manages alongside the council. The complainant has also provided significant details of previous complaints she has made to third party organisations.
33. The council said that the unprecedented amount of requests has inevitably had an adverse effect on the effectiveness and efficient operating of the council and that matters which ordinarily could and should be dealt with in a more timely fashion have dragged on, which has been commented on by residents.

34. The Commissioner was informed by the council that there have been, and currently are, vacancies on both its public bodies for which the three residents could apply to be co-opted members but they have never done so. It said it believes, and has some evidence, that the three residents are working together, but it does not know for what purpose, and it would seem that they are fishing for evidence/information that will enable them to challenge the council for perceived wrongdoing which is causing disruption and distress.

35. The council summarised its submission on the application of section 14(1) as follows:

*"We therefore feel that over the years we have been more than accommodating to these three residents and they now leave us with little choice but to bring matters to a conclusion for the following reasons:*

- The costs we have incurred in staff time in relation to FOI requests*
- The unjustified levels of disruption*
- The aggregated disproportionate burden in workload*
- The distress caused to staff and councillors*
- The lack of willingness by the residents to help and support us by applying to be co-opted members and contributing to discussion and decision making.*

*We are now of the opinion that to prevent further harm to our provision of services we must stop this seemingly never ending torrent of correspondence by means of s.14(1) of the Freedom of Information Act 2000."*

36. The remainder of the council's arguments relate to the burden on, and disruption to, the council, as well as the distress caused to the clerk and councillors. The Commissioner acknowledges the disruptive effect the requests from the three residents has had on the council and considers that this is compounded by the fact it is a small parish council with one part time clerk. She notes that the council argues that two clerks did not continue in their role due to the effect of the information requests, although the complainant's dispute that this is the case and argue that one was had taken the role on a temporary basis only and the other left for reasons unstated.

37. As stated in paragraph 22, the Commissioner needs to consider whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to the serious purpose and value of the requests. She has considered the council's arguments for the application of section 14(1) as supplied to her during the

investigation of this case. The arguments provided by the council also relate to other cases that the Commissioner is currently dealing with.

38. The Commissioner has also dealt with, and is currently dealing with a number of other cases from two of the individuals, and she has drawn on that knowledge and experience.
39. As noted in paragraph 26, the council said it has no doubt that three residents are working in concert to disrupt the workings of the council. The Commissioner's guidance on section 14(1) of the FOIA states at paragraphs 91 and 92:

*"If a public authority has reason to believe that several different requesters are acting in concert as part of a campaign to disrupt the organisation by virtue of the sheer weight of FOIA requests being submitted, then it may take this into account when determining whether any of those requests are vexatious.*

*The authority will need to have sufficient evidence to substantiate any claim of a link between the requests before it can go on to consider whether section 14(1) applies on these grounds. Some examples of the types of evidence an authority might cite in support of its case are:*

- *The requests are identical or similar.*
  - *They have received email correspondence in which other requesters have been copied in or mentioned.*
  - *There is an unusual pattern of requests, for example a large number have been submitted within a relatively short space of time.*
  - *A group's website makes an explicit reference to a campaign against the authority."*
40. The council's explanation of the pattern of behaviour of the three residents, as described in paragraphs 27 & 28, together with the council's, and Commissioner's, knowledge of a pre-existing relationship between two of the residents, suggests to the Commissioner that the council has sufficient evidence to substantiate a claim that the complainant and at least one of the other residents are acting in concert as part of a campaign. The complainant admits that she is working with one of the other requestors and does not dispute that they are actively working together as regards their requests.

41. Following on from this, the complainant denies any knowledge as to who the third party may be. The complainant suggests that the council numbered its requests between August 2014 and March 2016 and that they can only account for 10 of the 29 that were numbered. They argue that they have no knowledge of the other party identified by the council, but that according to the figures provided, he or she must have made the remainder of those requests if the councils' figures are correct. The complainant admits that since that point they have made a further five requests, all of which are currently with the Commissioner for consideration. Taking this into account the two admit to making 15 requests for information to the council since March 2016.
42. The Commissioner notes that some of the council's arguments as to why the request in this case is vexatious relate to actions, and lack of actions, that the three residents are entitled to carry out, or not carry out. Those being; lodging objections to the accounts, making information requests to third party public bodies, not attending meetings and not applying to be co-opted members of the council or Recreation Ground Charity.
43. The Commissioner's aforementioned guidance on vexatious requests states the following:

*"56. The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies.*

*57. In practice this means taking into account factors such as:*

- *Other requests made by the requester to that public authority (whether complied with or refused).*
- *The number and subject matter of those requests.*
- *Any other previous dealings between the authority and the requester.*

*And, assessing whether these weaken or support the argument that the request is vexatious."*

Therefore, the Commissioner has taken the council's points regarding the three residents actions, and lack of actions, into account when considering the context and history of this request.

44. With this in mind, the complainant's denial that it has made the number of requests argued by the council is noted, however the complainant also provided further evidence of the levels of contact and questioning which it has had with council staff over the period in question. In a letter to the Commissioner she said:

*"It is noticeable that the Council makes no mention of the constructive e-mails which have been sent to them, in some cases advising them promptly when, for example, extraordinary meetings have been improperly called by the clerk, or when a meeting was called by the new clerk to discuss matters which had already been settled at a meeting before she had been appointed, allowing an unnecessary meeting to be cancelled and saving considerable workload for her. Nor that the ICO has considered our earlier efforts with them to effect the council's compliance with the FOIA and agree a proper publication scheme on the council's website, nor the endless specialist advice which we have afforded to the Council concerning the continuing major mismanagement of the Recreation Ground Trust land."*

45. The Commissioner notes therefore that the complainants have sought to investigate council issues over a protracted period of time, resulting in numerous contacts from them questioning the actions of the council or the clerk more directly. Whilst this is in part a reason for the creation of the Regulations the levels of contact suggested by the complainant in relation to council business suggests an unreasonable amount of interference from the complainant and her associate. This would detrimentally affect the ability of the council to carry out its functions and place significant stress onto its staff.
46. It further appears to the Commissioner that the FOI/EIR requests have sought to obtain further information with which to make further complaints about the council to Regulators, or at the least to allow reasons for further contact with the council/the clerk to raise issues with its actions. Effectively therefore the receipt of requests such as this would be likely to cause distress or harass council staff who would be aware that further correspondence and complaints may be generated by any response they provide to the request.
47. It appears to the Commissioner that the detrimental effect on the council is partly due to failures on its part to properly deal with requests for information. The question to be considered is whether the council's failures in respect of the FOIA are due to the amount of additional work put onto it by the number of, and the nature of the requests, or whether the requests are the result of the failure of the council to provide clear answers in the past.

48. The Commissioner considers that the council has contributed to the breakdown of relations between it and the three residents and that some of its responses to requests act as a springboard for more requests to be made. She also has to consider the rights of individuals to access recorded information held by public authorities and the intention of the FOIA to create transparency on issues relating to public authorities. The council cannot absolve itself of its duties under the FOIA because of its size and nature. Having said this, the size of the council is a relevant factor in determining whether a request, or requests, is causing a disproportionate burden upon it.
49. The Commissioner also considers that the three residents haven't helped the situation as there doesn't appear to have been any consideration of them modifying their behaviour in order to reduce the burden on the council. It appears that matters between them and the council wouldn't be resolved even if the council provided all requested information. Some of the issues being pursued by the three residents aren't related to transparency legislation and the Commissioner does not consider that the FOIA is the forum to resolve such issues. An example of this is that the complainant has informed the Commissioner that the Charity Commission is currently exercising powers under section 15(2) of the Charities Act 2011 and the External Auditor has yet to close the Council's Accounts for 2015/16. The Commissioner considers that the council could establish a case for saying that some of the requests seek to visit issues which have an alternative route of redress via, for example, the Charity Commission, or the courts. Not pursuing such routes, and instead making numerous requests for information, can be seen as an inappropriate use of formal procedure, and limits the value of the request in this case. In this case the Charity Commission is involved as the land is held on trust by the charity which sits alongside the council, rather than by the council itself.
50. The Commissioner has also seen evidence of complaints to her about the council from the complainants where it is clear that there has been a significantly weakened value or purpose to the request.
51. The Commissioner understands that in this particular complaint the purpose and value of the request is to fully understand the situation regarding the use of Trust land by the Parish council and to further understand whether, and if so, why, it paid the costs for the surrender of a lease by the county council when those leases had already been overturned by the Land Registry. Effectively the Commissioner understands that if this is the case, any costs associated with this action paid by the Parish Council could be seen to be wasted public money. As described in paragraph 26, above the council has said that the school itself paid all costs for this.

52. To justify their position the complainant has provided a detailed argument regarding historical and ongoing issues with the council and its actions regarding various issues, including the issue of the lease. The Commissioner understands that the complainant's have been involving themselves in council matters over a number of years, and the complainant argues that she and her associate have successfully challenged many issues and actions of the council previously where they believed the council had not acted appropriately.
53. The Commissioner does not deny that there is clear evidence that the council has previously been poor in a number of areas, including its responses to FOI requests, and transparency generally over a wide number of issues which has been addressed by its internal auditors. The Commissioner has taken into account that many of the issues raised by the complainants have resulted in investigations being undertaken by other bodies with regulatory functions. For instance, the complainant has provided evidence to the Commissioner that the council has been sanctioned previously by its External Auditors in the form of a publication of a number of two 'Reports in the Public Interest' (see for instance <http://www.psa.co.uk/wp-content/uploads/2015/08/Kirby-Muxloe-PIR.pdf> issued in August 2015). These reports detail a number of issues with the council recognised by the Auditors, including issues with its responses to FOI requests. The Commissioner notes however that these relate essentially to historical matters, and that a new council was constituted following a number of resignations after the publication of the first report. However it appears from the above Report that a number of issues remained with the council at that time.
54. From the evidence provided by the complainant it appears clear that the complainant's have involved themselves with council matters and have challenged many actions where the council has failed to act appropriately. This includes actions with the Land Registry, the Charity Commission and the council's external auditors. The complainant also argued that there has been some degree of vituperative behaviour by the council, or at the least former members of the council, against them due to their involvement in previous council matters.
55. The complainant argues that there are still ongoing issues with the council and that without the ability to make requests under the Regulations of the FOI Act their ability to obtain information regarding the actions of the council would be curtailed. It says that the external bodies responsible for oversight of the council have limited powers and rely upon the public to raise complaints about the council's actions. She argues therefore that if the council is successful in declaring the request vexatious this may seriously curtail her, and others ability to identify issues and raise them with the appropriate organisations in the future.

56. Whilst that may be the case, there is also an obligation to use rights under the Act and the Regulations responsibly, and in this case the Commissioner has concerns over the burden which the complainant's have placed on the council through their endeavours to request information and chase issues where they consider that the council has acted improperly.
57. The Commissioner considers that the request has a serious purpose and value. She recognizes however that this value has been significantly weakened by the broad spread of issues which the complainants have made complaints about and the overall impact which the complainant's must understand their actions are having on the council. As stated, she has dealt with other complaints from the complainants and has seen evidence of at least one request made by the complainant's which added to the burden on the council but which had little overall value or purpose.
58. The Commissioner would like to point out that it is not within her remit to adjudicate on whether the council has acted appropriately or otherwise as regards to the use of Trust land. This is a question for the Charity Commission.
59. When making a decision in this case, the Commissioner has taken into consideration a First Tier Tribunal decision<sup>3</sup>. In that case, the request was one in a series of requests made by the appellant and was made in the context of an extensive series of requests made by four individuals, including the appellant. The public authority in this case was a small parish council employing one part-time clerk. Although the council had not always responded well to FOIA requests made to it (and had attracted the Commissioner's attention in this respect) it said that the total numbers of FOIA requests it faced from the four individuals had resulted in the serious compromise of its functions. During the course of the Commissioner's investigation into that matter, all of the councillors had resigned, citing the harassment arising from the requests. During the appeal, the parish clerk also resigned for the same reasons, the second clerk to do so in two years. The Appellant argued that his request was not vexatious but was merely intended to hold the council to account and expose its bad practice. He accused the council of acting in a covert and unaccountable manner. He argued that had the council

---

<sup>3</sup> EA/2013/0080 Walpole v IC & Walberswick Parish Council  
[http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1092/EA-2013-0080\\_02-10-2013.pdf](http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1092/EA-2013-0080_02-10-2013.pdf)

conducted itself properly, responded to previous FOIA requests properly, and apologised for its poor handling of his own requests, he would not have needed to make repeated requests. The Tribunal had no difficulty in finding the request vexatious and upholding the Commissioner's decision notice. In doing so, it called heavily upon the Upper Tribunal's judgement in *Dransfield*, noting that:

*"The purpose of section 14... must be to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA" (paragraph 7)*

The Tribunal also said:

*"Whilst, as noted by Judge Wikeley in Dransfield, "one of the main purposes of FOIA is to provide citizens with a (qualified) right to access to official information and thus a means of holding public authorities to account", FOIA provides just that and not more. It is intended to provide a right of access to official information; it is not intended, in itself, to provide a means of censure. Such matters are for the Ombudsman or the Administrative Court. Whilst providing accountability through a legitimate right of access to official information, the Act is not, and is not intended to be, a stick for the public to beat a public authority with." (paragraph 14)*

The Tribunal found that in this case the overall volume of information requests made to a small council, both by the Appellant and others, was such as to very seriously hinder the operation of the council. Whilst it was not established that the Appellant was acting in concert with the three other requestors, the Tribunal was satisfied that the Appellant must have been fully aware of the volume of FOIA requests faced by the council and the effect that it was having on it, when making his own request. It said:

*"In the Tribunal's view, the council had been wholly correct to say, in the words of Judge Wikeley in Dransfield (at §11), "Enough is enough" and to refuse to answer the Appellant's request relying upon section 14." (paragraph 18)*

60. The above case provides a very similar picture of the potential intentions of the complainant's in the current case. The complainant's generally make FOI requests of value and purpose, but the number of these combined with actions required by the council on other complaints to other public bodies about its actions have created a significant burden which the council has struggled to deal with. The complainant's have not curtailed their actions even though they must clearly be aware that this is the case. The complaint to the Commissioner regarding the council hiring a consultant to deal with their FOI requests demonstrates a

disregard for the effect which their actions have had, and are having on the council.

61. When considered in the context and history of this case, including consideration of the size and nature of the council, the Commissioner does not consider that the value and purpose of the request justifies the disproportionate effect on the authority of the overall burden placed on the council through the numerous requests. She considers that responding to the request is likely to cause distress to staff and further disruption to the council's operations.
62. The Commissioner also considers that providing the requested information is unlikely satisfy the complainant. Compliance with the request may result in further correspondence and the Commissioner has seen no evidence to suggest that providing the requested information in this specific request would satisfy the complainant or bring an end to the issue. Conversely, she considers that the complainant may use the requested information to create further points of dispute. The issue of the lease with the school is still ongoing. The complainant's arguments for arguing against the exception applying also refer to their ability to make requests and take action in the future. The Commissioner can understand how responding further to this request, when coupled with previous dealings with the complainants, would cause a disproportionate or unjustified level of disruption, irritation or distress.
63. Returning to the findings of the Upper Tribunal in Dransfield, and its view that a holistic and broad approach should be taken in respect of vexatious requests, the Commissioner has decided that the council was correct to apply the arguments relevant to section 14 of the Act to the request. Effectively the request follows the pattern of behaviour which it has seen before, and which leads to further complaints and an increased burden being placed upon it through further complaints and correspondence being generated.
64. Accordingly the Commissioner finds that regulation 12(4)(b) of EIR is engaged.

#### The public interest

65. Regulation 12(1)(b) requires that where particular exceptions are engaged then a public interest test is to be carried out. The test is whether the public interest in the information being disclosed outweighs that in the exception being maintained.

The public interest in the information being disclosed

66. The Commissioner accepts that there is a value to the requested information being disclosed. There is a public interest in public authorities being transparent on their use of public money, and in this case there are wider questions about the use of land which is intended to be held on trust for the community.
67. The Commissioner further accepts that there is evidence suggesting that the council does not appear to have made a clear distinction between its management of the bequest of the land as a charitable trustee, and the actions it has taken as a council with council assets. There is a public interest in this being clarified in order that steps can be taken for this to be rectified and/or to prevent it occurring in the future.
68. In this respect the Commissioner considers that the motivation of the requestors is to seek greater transparency about the actions of the council over the land in question. She accepts that mistakes may have been made by the council in the past and that there is a public interest in preventing this from occurring again.
69. Allowing access to information relating to the land provides some security that the council is acting appropriately and that it has recognised the clear distinction between its roles. It allows the public to ensure that the actions it does take accord with the charitable purposes which the land was left for, and that no use of it is made for parish council purposes or benefit.
70. More specifically to this case, a disclosure of the information would allow the complainant's greater understanding of the actions taken by the parish council regarding the surrender of the lease, and provide evidence to them of its assertion that the school paid for the costs of the surrender, not the Parish Council. It would not however clarify why that took place given that the leases had already been expunged, and would not give any indication of the further actions which the council or the charity is intending with the land as regards the intention to lease sections of the land to the school. This is because the complainant's argued that the request was limited to the surrender of the lease, and not to any new negotiations being undertaken between the council and/or the charitable trust and other parties regarding the land.
71. Finally there is merit to the complainant's argument that allowing the exception to be applied in this case will take away a degree of oversight which the complainant's are currently able to employ to ensure that the council is acting lawfully and appropriately. There is a public interest in allowing the public to be able to hold public authorities to account for the actions they take, and the FOI Act and the Regulations provide tools which aid in this process.

The public interest in the exception being maintained

72. The Commissioner recognises that there is a public interest in protecting authorities from members of the public who use rights under the Act (and other rights) as a rod with which to beat an authority. In the case of Parish Councils, their smaller size and budgets do leave open the potential for one, or a small number of individuals to cause significant issues within the authority because of the limited amount of staff, time and money they have to fulfil of all of their various duties.
73. The Commissioner accepts the value of the request in this case, but she also recognises that it is not appropriate for individuals to be able to significantly disrupt the running of a public authority by making a disproportionately large number of requests, even where the majority of those requests may have a degree of value or purpose.
74. The Commissioner accepts that they are seeking to ensure that, following previous issues, the council is now acting appropriately and transparently, however she is also fully aware of the burden and cost which the requests are having on the council, and she must bear in mind the irritation and distress which is likely to be furthered by the continuation of the complainants' pattern of behaviour. She recognises the overall impact which the number and content of the requests made by these complainants is having on the council, particularly when combined with other complaints or inquiries they are making, has created a significant degree of stress on council staff and on council time and resources. The council argues that it is effectively preventing the council from being able to provide its services effectively. It may also dissuade individuals from sitting on the council in the first instance.
75. The Commissioner recognises that, regardless of past actions, it cannot be right to allow a small number of individuals to effectively dictate the areas which the authority spends its limited resources and time on by making requests for information under the EIR or the Act. Whilst she recognises the historical issues which the complainant's have raised, and understands their reasons for continuing to monitor council she must ensure that the council is able to continue its work and is not overwhelmed by the ongoing requests for information.
76. Regulation 12(4)(b) applies to the request and not the requestor. However the Commissioner must also take into account the wider factors involved in this case, (the 'holistic view'). In particular she has taken into account the evidence (which she has been reported on in a confidential annex in case FS50632398). The Commissioner further notes evidence of requests being made by the requestor with a weak value or purpose, and accepts that councils argument that the presumed intention of this is fishing for further issues with the council's actions, presumably to make further complaints to, or about, the authority. She

does however recognise the real issues which the complainant's have highlighted through their complaints to her, and this is partly addressed in the 'Other Matters' section below.

77. Although in the current case there is a value to the request this is significantly weakened by the overall effect which the complainant's are having upon the council's ability to carry out its functions. It is not in the public interest to allow a situation to form where one, or a few parishioners effectively prevent a public authority from being able to carry out its functions. The Commissioner has also been made aware that the Charity Commission is investigating issues with the Recreation Ground Charity which works alongside the council, and she understands from the complainant that the council's external auditors are continuing to investigate issues relating to the 2015/16 accounts. These ongoing investigations weaken any value in further exacerbating the burden on the council with questions relating to the same issues.
78. As stated by the Upper Tribunal in the Dransfield case:

*"The purpose of section 14... must be to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA" (paragraph 7)*
79. The Commissioner has therefore weighed up the public interest issues in this case and has decided that the council was correct to reach the conclusion that the request was manifestly unreasonable. It is in the public interest for the exception to be maintained in order that the council can protect its ability to act for the public it serves as a whole.
80. The Commissioner therefore considers that the council was able to apply Regulation 12(4)(b) to the information.

## **Other Matters**

---

81. The Commissioner considers that the situation with this case was complicated by the council's lack of expertise and further compounded by the lack of engagement with the Commissioner.
82. It was necessary to seek further information and clarification from the council and despite the engagement of a consultant, deadlines for responding to written correspondence were missed, necessitating the issuing of an information notice. The deadline for responding to the information notice itself was also missed requiring the involvement of the Commissioner's solicitors to consider whether to issue a certificate to the High Court pursuant to section 54 of the FOIA.

83. The issues with engagement experienced in this case are not isolated. The Commissioner has seen the same pattern in other cases with the council. She has made enquiries regarding the lack of resources. The council should ensure that its responses to the Commissioner's enquiries in future are as thorough and timely as possible.
84. Additionally the Commissioner notes that the council's letter to the complainant dated 26 May 2017 advises the complainant that it considers her 'request(s) as vexatious and resolved to refuse any current /further freedom of information requests under section 14(1) of the FOIA.'
85. The council should ensure that it takes into consideration the Commissioner's guidance on dealing with vexatious requests<sup>4</sup> particularly paragraph 12:

*"It is important to remember that section 14(1) can only be applied to the request itself, and not the individual who submits it. An authority cannot, therefore, refuse a request on the grounds that the requester himself is vexatious. Similarly, an authority cannot simply refuse a new request solely on the basis that it has classified previous requests from the same individual as vexatious."*

86. It is not appropriate for the council to class future requests as vexatious without considering the specific request individually.

---

<sup>4</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

## Right of appeal

---

87. 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](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

88. 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.

89. 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**