



NCN: [2025] UKFTT 00352 (GRC)

Case Reference: FT/EA/2024/0321

**First-tier Tribunal  
(General Regulatory Chamber)  
Information Rights**

**Decided without a hearing  
Decision given on: 26 March 2025**

**Before**

**JUDGE SHENAZ MUZAFFER  
MEMBER ANNE CHAFER  
MEMBER AIMÉE GASSTON**

**Between**

**M A K WHITE**

Appellant

**and**

**THE INFORMATION COMMISSIONER**

Respondent

**Decision:** The appeal is dismissed.

## **REASONS**

1. This is an appeal against a decision of the Information Commissioner (the “Commissioner”) dated 29 July 2024, reference IC-291293-J9C8 (the “Decision Notice”).
2. The parties opted for a paper determination of the appeal. The Tribunal is satisfied that it can properly determine the issues without a hearing in accordance with rule 2 and rule 32(1)(b) of The Tribunal Procedure (First-tier Tribunal)(General Regulatory Chamber) Rules 2009 (as amended).

## **Factual background**

3. The appeal relates to the application of the Environmental Information Regulations 2004 (“the EIR”). It concerns information held by Kent County Council (“the Council”) regarding parking on a paved vehicle access point outside a specified residential address.

## **The request and responses**

4. The appellant made the request which is the subject of this appeal on 27 December 2023 in writing as follows:

*“Please advise what agreement is in place for a vehicle crossing and/or parking on the highway verge outside [address redacted]”.*

5. The Council responded on 25 January 2024 and refused the request, relying on regulation 12(4)(b) EIR, namely that the request for information is manifestly unreasonable. The Council stated that:

*“In coming to this conclusion [namely that the regulation 12(4)(b) exception applies], the Council considered the history of interactions associated with this issue since April 2022, the burden associated with managing these communications, and the resolutions that have been affected to date.*

*The Council recognises that the matter in question has already been fully and conclusively settled through extensive correspondence and a referral to the Local Government Ombudsman.*

*The Regulation 12(4)(b) exception is subject to a Public Interest Test. The Council has weighed the above factors against the general presumption in favour of disclosure for environmental information. We have concluded that while you may have some significant private interest in disclosure, there is relatively little wider public interest.*

*Additionally, we consider it is likely that any response we issue is likely to generate further enquiries on this matter, further compounding the impact on public resources. As a result of this, the Council has determined that the public interest in maintaining the exemption outweighs the public interest in disclosing the information”.*

6. The Appellant requested an internal review of the decision to withhold the requested information on 29 January 2024, stating that there had been “*shambolic communications*” from the Council. He challenged the conclusion of the Council that there was “*relatively little wider public interest*” in the requested information, stating that “*Obviously there will be wider public interest in the fact KCC [Kent County Council] has changed the use of the highway verge, without consultation and without a ‘stopping up’ order. Which I believe is unlawful*”.
7. The Council provided the outcome of its internal review on 26 February 2024, in which they upheld the original response and determined that the Council was correct

to refuse the request as being manifestly unreasonable. The response from the Council stated:

*"... I have confirmed that there has been extensive communication with you regarding this matter over the span of two years.*

*Over the last year, you have submitted seven Freedom of Information requests, some of which have been duplicated and overlapping, all of which have related substantially to the same matter. These were submitted on:*

- 30/01/2023, ref: 34901861
- 30/01/2023, ref: 34896462
- 30/03/2024, ref: 36304666
- 10/05/2023, ref: 37306709
- 19/05/2023, ref: 37607231
- 26/05/2023, ref: 37827022
- 28/12/2023, ref: 43659351

*The Council conducted a review of this matter via the corporate complaints process, providing a Stage 1 response on 30<sup>th</sup> November 2022, and a Stage 2 response on 30<sup>th</sup> May 2023.*

*The Local Government Ombudsman then also considered your complaint and declined to proceed further on 5 October 2023, citing insufficient evidence of fault to justify investigating.*

*It is the Council's view that responding to the request is manifestly unreasonable because it is an attempt to reopen a matter that has already been conclusively addressed through other channels, and that engaging further on that issue would result in further communications, requests for information, and burden on resources".*

8. The Appellant raised a complaint with the Commissioner on 28 February 2024, stating that *"There is no logical reason why this simple piece of information should not be disclosed unless Kent County Council are determined that this information should not get into the public domain if they cannot justify the decisions made. Kent County Council are not being transparent in their disclosure of information"*.
9. On 24 May 2024, a Senior Case Officer wrote to the Council on behalf of the Commissioner, requesting information as to why, in the circumstances of the case, the Council relied on regulation 12(4)(b) EIR to refuse the request.
10. The Council provided an extensive response to the questions that had been raised by the Senior Case Officer on 12 June 2024. In summary, the response from the Council stated as follows:

- a. Whilst compliance with the request would impose a relatively minor burden in itself, the request had been viewed in the context of a broader pattern of extended correspondence with the Appellant over the previous two years on the same issue, resulting in a formal complaints process and an LGO appeal process being exhausted;
- b. By way of background, the Council indicated that the residents of the specified address had applied for permission to widen their driveway to create a vehicle access point over the abutting grass verge in 2022. The Council had granted permission for this application. The Appellant had raised numerous complaints with the Council about the residents of the specified address, including in relation to the widening of the driveway access point and the subsequent parking on that land;
- c. The Appellant had expressed dissatisfaction that the Council had not pursued formal enforcement action against the residents of the specified address;
- d. The responsibility for managing the Appellant's enquiries sat with the Folkestone Highways Unit, which comprised five officers. Over the previous two years, the need to respond to correspondence and complaints from the Appellant, carry out regular site inspections and consider regulatory requests had resulted in a significant diversion of their time, and had also caused them significant stress;
- e. The Appellant had initially lodged an enquiry about the residents of the specified property, which is opposite his own property, paving over some of the grass verge with the Council's Highways Unit in April 2022. He had raised further concerns about the resident subsequently parking on this access point, resulting in officers attending the site in December 2022 to carry out further inspections for inappropriate parking. Council officers had verbally discussed parking allowances with the resident of the specified property, and later sent a written reminder via email. The Appellant had been advised of these actions via the complaints process and was invited to submit evidence of inappropriate parking if it should occur in the future. In May 2023, the Appellant wrote to the Council's Highways Definitions Team, to ask whether a stopping-up order (which relates to the process whereby a piece of highways land ceases to be publicly maintained) had been issued. He was advised that no order had been issued. He also submitted several EIR requests on the same issue. The Appellant then escalated this complaint about the lack of enforcement action to the Local Government Ombudsman, who responded to him in October 2023 to indicate that there was insufficient evidence of fault or maladministration on the part of the Council to warrant further involvement;
- f. The Council indicated that officers regularly visited the area to verify whether inappropriate parking was occurring, and that the outcome of those inspections was recorded on their case management systems. The Appellant was fully aware of this process. The Appellant had made subsequent

complaints about other highways matters, which included further complaints about his neighbour's driveway. The Council had advised him that, following the decision by the Local Government Ombudsman, the Council would not engage in further correspondence with him on the same issue;

- g. The Council asserted that, in their opinion, the request that is the subject of this appeal is *"effectively an attempt to restart this process, looking for ways to challenge the validity of the access point itself"*. The Council stated that *"Given that this issue has been exhaustively explored previously, the Council considers that to do so again would be futile and a waste of public resources"*;
- h. The Council considers that the core of the issue is likely to be motivated by a neighbour dispute, whereby the Appellant is unhappy about the way that his opposite neighbour is parking their vehicles on land near to his property. The dispute may have been triggered by a planning application for an extension to the specified property dating back to 2021;
- i. The Council asserted that there is an extremely limited public interest attaching to the requested information, for reasons including:
  - (i) the limited number of people directly affected by the disclosure, being the Appellant and the resident of the specified address only;
  - (ii) the minimal impact on public safety caused by the alleged parking, in that qualified highways officers have assessed that there is minimal risk posed to pedestrians or emergency services vehicles, given the nature of the road and the low volume of traffic;
  - (iii) that lack of evidence of heightened risk or a pattern of relevant incidents in that area, with publicly-available crash data indicating that there had only been four minor incidents in the immediate area in the past twenty-four years, with none of those incidents occurring outside of the properties in question;
  - (iv) the lack of actual or alleged wrongdoing associated with the approval of the access point or of the measures that the Council has taken to ensure that the land is being used properly; and
  - (v) the fact that the Council's resources are exceptionally strained at present, both financially and in terms of officer workload and availability.
- j. The Council also provided a summary of the six previous requests for information that had been received from the Appellant in relation to the same issue prior to the request that is the subject of this appeal. Of those, two were responded to in full, one was refused as the information was publicly accessible, one was refused as the information was not held, and two were rejected as being duplicate requests that had already been responded to by the

Council. We have read the content of all six of the previous requests and they all relate to the paving over of the grass verge outside the specified property and its use as additional parking. No complaints have been submitted to the Commissioner regarding the handling of the previous requests.

### **Decision notice**

11. The Commissioner decided that the Council was entitled to refuse the request under regulation 12(4)(b) EIR, and did not require the Council to take any further steps.

12. In summary, the reasons for the Commissioner's decision were:

- a. The Commissioner had issued guidance on the application of regulation 12(4)(b) EIR, which was taken to apply in circumstances where either the request was vexatious (as was asserted by the Council in this case), or where the cost of compliance with the request would be too great. It recognised that the exemption, if engaged, was subject to a public interest test;
- b. The relevant consideration was whether the request itself was vexatious, rather than the individual submitting it. The Commissioner stated that *"Sometimes, it will be obvious when requests are vexatious, but sometimes it may not. In such cases, it should be considered whether the request would be likely to cause a disproportionate or unjustified level of disruption, irritation or distress to the public authority. This negative impact must then be considered against the purpose and public value of the request and the history of its relationship with the requestor when this is relevant"*;
- c. The consequence of regulation 12(2) EIR was that a public authority must apply a presumption in favour of disclosure and that the regulation 12(4)(b) exception could only be maintained if the public interest in refusing the request outweighs the public interest in responding to it;
- d. Given that the Appellant is aware of the Council's position that permission was granted for the paved vehicle access point in 2022 and that the hard standing was allowed for access only so that parking on the vehicle access point is not permitted, the Commissioner's view is that the request lacks any significant value or serious purpose;
- e. The Commissioner agreed with the Council that the Appellant appears to be attempting to re-open the matter of how the Council has responded to his complaints about parking on the access point, rather than genuinely seeking information held by the Council;
- f. The Commissioner's view is that the Appellant is demonstrating unreasonable persistence by seeking to re-open the matter even after the Local Government Ombudsman has considered the Council's handling of the parking issue, which is a further factor characterising the request as vexatious;

- g. The collective burden of dealing with the six previous requests for very similar information, combined with the burden imposed by the request that is the subject of this appeal, render this request vexatious;
- h. The Commissioner agrees that it is unlikely that responding to this request would resolve the situation to the Appellant's satisfaction. Instead, it seems likely that requests would continue to be made, adding to the burden already incurred by the Council;
- i. The Commissioner was therefore satisfied that the exemption at regulation 12(4)(b) was engaged, concluding that *"the cumulative burden of dealing with this series of related requests represents a disproportionate or unjustified level of disruption, given the very limited value or serious purpose of the request"*.
- j. In relation to the public interest test, the Commissioner *"acknowledges that in general terms there is a public interest in the disclosure of information that relates to the issue of illegal parking, in the specific circumstances of this case, he considers the public interest in the disclosure of the information requested to be extremely limited. This interest is therefore easily outweighed by the public interest in protecting the Council's limited resources from unreasonable requests"*.

## **Grounds of appeal**

13. The Appellant appealed on 19 August 2024.

14. The Grounds of Appeal are, in essence, that:

- a. The Commissioner had failed to include information in his response that the vehicle crossing was a verbal agreement between the Council and the owners of the specified property, and that entering into a verbal agreement was not the actions of a responsible Council;
- b. The Commissioner had failed to include information in his response about a failure of the Council to respond to a previous FOI request (which does not appear to be one of the six FOI requests referred to by the Council in their response to the Commissioner's questions);
- c. The Council were failing in their duties by not taking enforcement action against the owners of the specified property for parking on the vehicle access point. The Appellant asserted that the change of use of the highway verge without a 'stopping up' order was unlawful, and that the FOI requests had been generated due to a lack of action by the Council as a *"smoke screen"* for not supplying the requested information;
- d. The Appellant speculated that the lack of response by the Council to the FOI requests could be either because the vehicle crossing agreement was no longer in force, or because the Council were no longer carrying out inspections. He asserted that *"this is a classic case of a large organisation trying to silence an individual"*.

## **The response of the Commissioner**

15. The Commissioner's response, dated 24 September 2024, maintains that the Decision Notice was correct. He places reliance on the Court of Appeal decision in *Dransfield v Information Commissioner & Devon County Council* [2015] EWCA Civ 454, in which the Upper Tribunal held that, for all intents and purposes, the term "manifestly unreasonable" has the same meaning as "vexatious" under section 14(1) FOIA.

## **Legal Framework**

16. The relevant provisions of EIR are as follows:

### **5. Duty to make available environmental information on request**

- (1) Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

.....

### **12 Exceptions to the duty to disclose environmental information**

- (1) Subject to paragraphs (2), (3), and (9), a public authority may refuse to disclose environmental information requested if –
- (a) an exception to disclosure applies under paragraphs (4) or (5); and
  - (b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

- (2) A public authority shall apply a presumption in favour of disclosure.

- (3) .....

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

- (a) .....
- (b) the request for information is manifestly unreasonable;
- (c)-(e).....

.....

17. The EIR does not provide any assistance as to what is meant by 'manifestly unreasonable'. The Upper Tribunal gave guidance in *Information Commissioner v Devon County Council and Dransfield* [2012] UKUT 440 (AAC), upheld and clarified by the Court of Appeal in *Dransfield v Information Commissioner and Devon County Council* [2015] EWCA Civ 454. Given that the two tests are essentially the same, references below to "vexatious" should be read as references to "manifestly unreasonable".



18. As noted by Arden LJ in her judgment in the Court of Appeal in *Dransfield*, the hurdle of showing a request is vexatious is a high one: “...the starting point is that vexatiousness primarily involves making a request which has no reasonable foundation, that is, no reasonable foundation for thinking that the information sought would be of value to the requester, or to the public or any section of the public. Parliament has chosen a strong word which therefore means that the hurdle of satisfying it is a high one, and that is consistent with the constitutional nature of the right. The decision maker should consider all the relevant circumstances in order to reach a balanced conclusion as to whether a request is vexatious” (para 68).
19. Judge Wikeley’s decision in the Upper Tribunal sets out more detailed guidance that was not challenged in the Court of Appeal. The ultimate question is, “is the request vexatious in the sense of being a manifestly unjustified, inappropriate or improper use of FOIA?” (para 43). In the context of reviewing the Commissioner’s Guidance, Judge Wikeley highlighted “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” (para 45). Arden LJ in the Court of Appeal also emphasised that a “rounded approach” is required (para 69).
20. The Upper Tribunal set out four non-exhaustive broad issues which can be helpful in assessing whether a request is vexatious (or, for the purposes of this appeal, manifestly unreasonable):
- a. **The burden imposed on the public authority by the request.**  
This may be inextricably linked with the previous course of dealings between the parties. “...the context and history of the previous request, in terms of the previous course of dealings between the individual requester and the public authority in question, must be considered in assessing whether it is properly to be characterised as vexatious. In particular, the number, breadth, pattern and duration of previous requests may be a telling factor” (para 29).
  - b. **The motive of the requester.**  
Although FOIA is motive-blind, the Upper Tribunal observed that “what may seem like an entirely reasonable and benign request may be found to be vexatious in the wider context of the course of dealings between the individual and the relevant public authority” (para 34).
  - c. **The value or serious purpose of the request.**  
Regard should be had to the inherent value of the request, specifically “does the request have a value or serious purpose in terms of the objective public interest in the information sought?” (para 38), albeit that a lack of apparent objective value cannot provide a basis for refusal on its own.
  - d. **Any harassment of, or distress caused to, the public authority’s staff.**  
Vexatiousness “may be evidenced by obsessive conduct that harasses or distresses staff, uses intemperate language, makes wide-ranging and unsubstantiated allegations of

*criminal behaviour or is in any other respects extremely offensive*" (para 39), although this is not a prerequisite for concluding that a request is vexatious.

21. Overall, the purpose of section 14 (and, by inference, the corresponding provision in regulation 12(4)(b) EIR) is to "*protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA*" (Upper Tribunal, para 10).

### **The role of the Tribunal**

22. The Tribunal's remit is governed by section 58 FOIA. This requires the Tribunal to consider whether the decision made by the Commissioner is in accordance with the law or, where the Commissioner's decision involved an exercise of his discretion, whether he ought to have exercised it differently. The Tribunal may receive evidence that was not before the Commissioner and may make different findings of fact from the Commissioner.

### **Issues**

23. The issue for the Tribunal to determine is whether the Information Commissioner's Decision Notice was in accordance with the law and whether the Information Commissioner was correct in upholding the decision of the Council to rely on regulation 12(4)(b) EIR in refusing the Appellant's request.

24. The issues for the Tribunal are:

- i. Whether in all the circumstances of the case, the request for information is manifestly unreasonable; and
- ii. Whether in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

### **Evidence**

25. We read and took account of an open bundle containing 76 pages including indexes.

### **Discussions and conclusions**

26. The Tribunal considered the non-exhaustive list of issues as set out by the Upper Tribunal in *Dransfield* and the overall circumstances of the case, including the history of the relationship between the Appellant and the Council.

27. **The burden imposed on the public authority by the request.** This is a key factor relied upon by the Council. Whilst the mere fact that responding to a request may be burdensome, that in itself does not absolve the Council from their legal obligations under EIR. However, each request must be considered in context, and the Tribunal has therefore taken the previous dealings between the Appellant and the Council into account when assessing whether the request is manifestly unreasonable.

28. The Tribunal notes that, over the course of eleven months in 2023, the Appellant has sent six other requests to the Council, all of which related to the usage of the highway verge outside the specified property. These requests were against a background of other communications between the Appellant and the Council regarding the use of the verge dating to 2022. The Council had considered the Appellant's complaints via their internal complaints process, responding to the Appellant in November 2022 and May 2023. In addition, the Appellant had escalated his complaint about a lack of enforcement to the Local Government Ombudsman in May 2023, who declined further involvement on the basis of insufficient evidence of fault or maladministration on the part of the Council.
29. The Appellant states that the information sought is limited in extent, and that the resources that are being utilised by the Council to withhold the requested information far outweigh those that would be required to provide the requested information. He states that the burden that is complained of by the Council in responding to the request is "*of their own making*".
30. The Tribunal accepts that, in isolation, this request may be easy to answer. However, we have considered the aggregated burden of dealing with the volume of correspondence from the Appellant, noting in particular that requests are dealt with by a small team of only five members, and that there has been a significant diversion of their time and attention over the last two years in dealing with the communications from the Appellant – not just in relation to responding to correspondence and complaints, but also as a result of the need to carry out regular site inspection.
31. **The motive of the requestor.** It is the case generally that the application of the EIR and any request made under it is not dependant on the motive behind the request. However, regulation 12(4)(b) is an exception to this principle. The motive of the requestor can be an important factor as to whether a request is manifestly unreasonable or vexatious in the wider context of the dealings between an individual and a public authority. In this case, the Appellant denies that there is any neighbourhood dispute that is the nexus for his request. Whilst not expressly stated, it can be inferred that his motives, at least on the face of it, relate to the wider public interest that he perceives exists in relation to the change in use of the highway, and the lack of transparency from the Council in respect of their decision-making regarding the change of use of the highway.
32. The Tribunal is satisfied that the history and content of the communications between the Appellant and the Council demonstrate that, in reality, the EIR request is being used by the Appellant as an attempt to re-open the matter of how the Council has responded to his complaints about parking on the access point – an issue which has been addressed in full.
33. **Value or serious purpose of the request.** The Tribunal recognises that there is a general public interest in the disclosure of information that relates to the issue of illegal parking and the response of a Council to that issue. However, we find that

this request lacks any significant value or serious purpose. The Appellant is already fully aware of the information that would constitute the response to his request – he knows that the Council’s position is that permission was granted for the paved vehicle access point in 2022, and that such permission did not extend to parking on the paved vehicle access point. The information sought in the request that is the subject of the appeal is effectively a duplication of the requests previously made throughout 2023. We also note that the Local Government Ombudsman has already determined that there is no indication that the Council has not acted appropriately in relation to the concerns raised by the Appellant.

34. **Any harassment of, or distress caused to, the public authority’s staff.** The Council notes that managing the Appellant’s enquiries “...is causing significant stress for the involved officers, as well as detracting from their other duties. This is exacerbated by the view that this matter is unlikely to naturally conclude, as Mr White will probably continue to pursue this grievance using whichever means are available”.
35. We recognise that the Appellant has not used the extreme type of language referred to in *Dransfield* and nor can his behaviour be categorised as ‘extremely offensive’. However, we do find that the repeated attempts to reopen issues that have been resolved and to add to the burden on staff will have caused them some stress and concern.
36. Having considered all of the circumstances of this case, the Tribunal finds that the request is manifestly unreasonable.
37. Having concluded that the regulation 12(4)(b) EIR exception is engaged, we then turn to consider whether, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
38. As noted above, we accept that there is a general public interest in the disclosure of information that relates to the issue of illegal parking and the response of a Council to that issue, and of transparency more generally. However, we conclude that the public interest in the disclosure of the information requested in this case is extremely limited. We agree with the five factors upon which the Council places reliance in relation to the public interest, namely:
  - i. The limited number of people directly affected by the disclosure, which is limited to the residents of the specified address and the Appellant;
  - ii. The minimal impact on public safety to pedestrians and emergency vehicles caused by parking on the paved verge, given the nature of the road and the low volume of traffic;
  - iii. The lack of evidence of any heightened risk to road-users;
  - iv. The absence of any implication of wrongdoing on the part of the Council, either associated with the approval of the initial application or relating to the measures that the Council has taken subsequently to ensure that the land is being used properly;

- v. Given the current strain on the Council's resources, we agree with the Council that *"continuing to engage in what is effectively a neighbour dispute deprives the broader public of those resources"*.

39. On that basis, we find that the overarching public interest in favour of maintaining the exception outweighs the public interest in disclosing the information. The Tribunal has taken into account the underlying purpose of regulation 12(4)(b) EIR and accordingly finds that the Council was entitled to rely on regulation 12(4)(b) EIR to refuse to reply to the request that is the subject of this appeal.

### **Conclusion**

40. The Tribunal dismisses the appeal for the reasons given above.

Signed: Judge Shenaz Muzaffer

Dated: 24 March 2025