

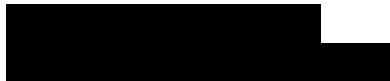
**Freedom of Information Act 2000(FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 12 May 2020

Public Authority: Wimbledon and Putney Commons Conservators
Address: Manor Cottage
Windmill Road
Wimbledon Common
London
SW19 5NR

Complainant:
Address:



Decision (including any steps ordered)

1. The complainant has requested information regarding an agreement to exchange land between Wimbledon and Putney Commons Conservators (WPCC) and Royal Wimbledon Golf Club (RWGC).
2. WPCC refused to comply with the request on the basis that it was manifestly unreasonable, citing regulation 12(4)(b).
3. The Commissioner's decision is that WPCC is entitled to rely on regulation 12(4)(b) to refuse to comply with the request and that in the circumstances of this case, the public interest lies in maintaining the exception.
4. The Commissioner does not require the public authority to take any steps.

Background

5. Wimbledon and Putney Commons is a charity managed by WPCC. It was established under The Wimbledon and Putney Common Act 1871 (the 1871 Act). The Commons comprise some 1140 acres across Wimbledon Common, Putney Heath and Putney Lower Common.

6. Under the 1871 Act, it is the duty of the Conservators (five elected and three appointed) to keep the Commons open, unenclosed, unbuilt on and their natural aspect preserved.
7. Wimbledon and Putney Commons is largely funded by a levy on local residents which is administered through the Council Tax collected by three councils, namely Wandsworth, Merton and Kingston.
8. The Commissioner understands that arrangements between WPCC and RWGC date back to as early as 1954. At this time a seven year licence between the two organisations was agreed, allowing RWGC to utilise part of the Commons as a parking area for motor vehicles for members and guests of RWGC. The agreement required RWGC to reinstate the land as grass upon termination of the licence, and it was prohibited from erecting or placing any form of building on the site. RWGC was permitted to erect signage stating that the area comprised the RWGC car park.
9. In the late 1970s, WPCC was required to find land upon which it could erect a maintenance building. Under the 1871 Act, WPCC cannot build upon the Commons and it therefore needed to acquire a site which was not part of the Commons. In 1979, WPCC and RWGC entered into reciprocal agreements in which WPCC was given permission to build a maintenance shed on RWGC land and, in exchange, WPCC agreed to provide a licence to RWGC to use the area of the Commons next to the golf club as a car park.
10. In 2005, the agreement was updated via a Deed of Variation which clarified that RWGC is entitled to exclusive use of the car park ,but could not prevent members of the public from crossing the car park to access the Commons.

Request and response

11. On 5 November 2018, the complainant wrote to WPCC and requested information in the following terms:

***"Freedom of Information/Environment Information Regulations
– WPCC/Lease of land to the Royal Wimbledon Golf Club for a
private car park***

*I wish to make a request under FOI/EIR in respect of the lease of land
by the WPCC to the RWGC.*

*As you are aware the 1871 Act states that it is unlawful for the
Conservators to sell, lease, grant or in any manner dispose of any part*

of the commons. The lease of land to the RWGC for a private car park is a material breach of the Act and is unlawful. The Commons are kept "forever open and unenclosed" and the grant of a substantial car park for the private benefit of a golf club cannot be squared with this legal obligation

At the time of the sale of the lease, the charity trustees will have received professional advice, including the value of the land leased to the RWGC. The professional advice will have been in the form prescribed by charity law.

- 1. Copies of all "Qualified Surveyors Reports" and/or "valuations" and/or "valuation advice" (whether in formal reports/otherwise) procured by the WPCC up until the lease was granted.*
 - 2. If there was subsequent advice in respect of value, post the grant of the lease, I wish to receive that advice as well.*
 - 3. Copies of all other professional advice received at the time of the sale (ie from Counsel or solicitors etc acting for the WPCC), for example that the sale was in breach of the act, and unlawful.*
 - 4. Copies of all other information which is held in respect of the sale (ie correspondence between management/trustees/advisers/insurers and so on)."*
12. WPCC provided its response on 23 November 2018. WPCC confirmed that it is not subject to the FOIA but is subject to the EIR in respect of environmental information that it holds. In response to the request WPCC explained that it had never entered into a lease or sale arrangement with RWGC for lands that comprise any part of the WPCC. It set out that it therefore interpreted the request as being for information relating to the exchange of use of two parcels of lands in the 1970s. WPCC provided a summary of the history of that exchange.
13. WPCC further stated that it was refusing to comply with the complainant's request on the basis of regulation 12(4)(b) as it considered the request was manifestly unreasonable.
14. On 2 December 2018, the complainant requested an internal review of the handling of his request for information. He disputed that his request for information was manifestly unreasonable and explained that he considered this request was reasonable due to the alleged behaviour of the WPCC Board. The complainant also disputed WPCC's statement that it had not entered into a lease.
15. On 10 December 2018, WPCC acknowledged the complainant's request for an internal review. WPCC also offered to meet with the complainant to attempt to resolve the issue informally. WPCC confirmed that if he was still dissatisfied following this meeting, it would undertake an

internal review. A meeting took place on 14 December 2018 and it was agreed that WPCC would proceed with the internal review.

16. On 10 January 2019, the complainant advised WPCC that he had obtained legal advice regarding the agreement which is the subject of this request.
17. On 11 January 2019 confirmed that the internal review was progressing and a response would be provided by 30 January 2019.
18. On 14 January 2019 WPCC asked the complainant for a copy of the legal advice obtained. It also set out that as the complainant had decided to pursue his complaint via another authority, namely the Charity Commission, it would not progress the internal review any further. This was in line with WPCC's complaints procedure.
19. On 15 January and 1 February 2019, the complainant contacted WPCC. Among other issues, he asked to be put in touch with the independent person appointed to conduct the internal review.
20. WPCC responded on the same day and confirmed that it would not proceed with the internal review unless instructed to do so by the Commissioner.
21. The complainant subsequently contacted the Commissioner, who wrote to WPCC on 21 March 2019. The Commissioner asked it to complete the internal review into the handling of the complainant's request for information.
22. WPCC provided the outcome of its internal review on 11 April 2019. It upheld the original response and reliance on regulation 12(4)(b).

Scope of the case

23. The complainant contacted the Commissioner on 12 April 2019 to confirm that he was dissatisfied with the outcome of the internal review and requested the Commissioner investigate WPCC's reliance on regulation 12(4)(b).
24. The Commissioner considers that the scope of this investigation is, therefore, to determine whether WPCC is entitled to rely on regulation 12(4)(b) to refuse to comply with the complainant's request. She will not comment on whether the decision to exchange land with RWGC was lawful.

25. The Commissioner emphasised to the complainant that her role is to decide whether a particular request has been handled in accordance with the requirements of the EIR. She cannot comment on or become involved in the complainant's dispute with WPCC or make any finding with regard to WPCC's compliance with other legislation.

Reasons for decision

Regulation 12(4)(b): manifestly unreasonable request

26. Regulation 12(4)(b) of the EIR provides an exception from disclosure to the extent that the request is manifestly unreasonable. 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*.¹
27. In *Craven*, the Tribunal found that there is, in practice, no difference between a request that is vexatious under the Freedom of Information Act 2000 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 her published guidance.²
28. A differently constituted Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield*³. The Upper Tribunal's approach, subsequently upheld in the Court of Appeal, established that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious. The Commissioner is of the opinion that these concepts are equally relevant when assessing whether a request for environmental information is manifestly unreasonable.
29. The Upper Tribunal also found it instructive to assess the question of whether a request is vexatious by considering four broad issues:

¹ [2012] UKUT 442 (AAC)

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

³ [2012] UKUT 440 (AAC)

- (i) The burden imposed by the request (on the public authority and its staff);
 - (ii) The motive of the requester;
 - (iii) The value or serious purpose of the request; and
 - (iv) Any harassment or distress of and to staff.
30. 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)

WPCC's position

31. WPCC maintained that the complainant's request was manifestly unreasonable on the basis that it was vexatious. WPCC provided the Commissioner with lengthy and detailed submissions and approximately 1500 pages of evidence regarding its history with the complainant. Due to the volume of this information, the Commissioner will not reproduce this information in its entirety. However, all of the information has been included in her consideration of this case.
32. WPCC explained that the complainant had been involved in several disputes with WPCC, including disputes with consultants and legal advisers providing professional services. The complainant's involvement with WPCC started in 2012 when he objected to a proposal by the London Borough of Wandsworth to build a primary school and residential development on the site of Putney Hospital. Access to the site was proposed to be via an easement on land owned by WPCC. WPCC further explained that the complainant became involved in an unsuccessful judicial review of WPCC's powers to enter into the easement.
33. In 2015 the complainant was elected as a Conservator and trustee of WPCC, and sought to interrogate information relating to a number of previous decisions made by WPCC. He also commissioned an external valuation of the easement in his capacity as a Conservator and trustee without Board consent and with undisclosed instructions. The complainant subsequently notified the Charity Commission of what he considered to be a significant undervaluation of the easement provided by WPCC. This led to the opening of a statutory inquiry by the Charity Commission in 2017. The Charity Commission had not published its final report at the time of issuing this decision notice.

34. WPCC lodged a formal complaint through the chief executive about the complainant's conduct while acting as a Conservator and trustee. WPCC accused the complainant of intemperate and abusive behaviour towards trustees, staff and third parties, as well as publishing unfounded allegations of dishonesty. WPCC considered that the complainant's conduct amounted to a campaign to disrupt the effective operation of WPCC and bring it into disrepute.
35. WPCC explained that the complainant unsuccessfully contested the 2018 Conservator elections and since this time had continued to challenge the Board's decisions. He complained to the Charity Commission about the fairness of the elections, as well as the lawfulness of an agreement between WPCC and a local public house to place benches on the Commons. WPCC confirmed that the Charity Commission investigated the matter and had been satisfied that no further action should be taken. WPCC confirmed that the new Chair met with the complainant to discuss his concerns, but this did not resolve the dispute.
36. WPCC also maintained that since 2012 the complainant had engaged in a relentless stream of defamatory public statements against WPCC, former and current Conservators and staff members. WPCC considered the tone of the complainant's communications to be abusive, aggressive, unprofessional and highly objectionable. It considered that the tone and nature of the correspondence and particularly postings on public websites, had the effect of harassing the charity. It also caused distress to staff, Conservators, volunteers and all those who provided services to WPCC.
37. WPCC described the request of 5 November 2018 as abusive and aggressive since it accused WPCC of entering into an unlawful agreement. In WPCC's opinion the subsequent request for an internal review made unfounded accusations of WPCC being deceitful and wasting the charity's money on legal fees. WPCC also drew the Commissioner's attention to the complainant's correspondence of 10 December 2018, in which he alleged that the WPCC board "*lied to the Charity Commissioner*" and "*colluded with professional advisors to deny the under-sale of land, to protect their personal interest. These are not the actions of trustees acting solely in the interests of the charity.*"
38. In addition, WPCC considered that the complainant's behaviour and actions since 2012 had placed a substantial burden on WPCC and consumed considerable resources, diverting them away from the day to day management of the Commons. WPCC pointed out that the request dated 5 November 2018 was the complainant's third request for information relating to Board decisions since the newly constituted Board was formed in April 2018. As a former Conservator and trustee from 2015 to 2018, the complainant had access to a considerable

amount of confidential and legally privileged information regarding the charity. WPCC argued that much of this information had been requested again by the complainant in his request of 5 November 2018.

39. WPCC considered that responding to the complainant's request would divert resources away from the management of the Commons and present a grossly oppressive burden on the charity. WPCC is managed by a team of 23 staff, with four people supporting the Chief Executive in delivering operational management and administrative duties.
40. WPCC explained that responding to the request would require substantial work to research its extensive archive for all relevant material relating to the licence agreement between RWGC and WPCC. It anticipated that assessing the relevance of information, collating that information and if necessary redacting personal information would represent a significant undertaking. It considered that all information relating to the maintenance centre would also be relevant, owing to the complex nature of the reciprocal agreements. This would also need to be identified and examined, which would require additional work.
41. WPCC confirmed that the complainant had offered to visit the WPCC office to review the material in order to reduce the administrative costs of complying with the request. However, WPCC concluded that this was unfeasible because some of the information would require redaction, and in any event it would require a staff member to be diverted from their duties to supervise such a visit.
42. WPCC acknowledged the complainant's assertion that his motive was simply to protect the interests of the charity. However WPCC was of the view that the complainant had no obvious intent to obtain the requested information. Having considered the context and history of the complainant's relationship with WPCC, WPCC concluded that the request aimed to disrupt and undermine the governance, management and reputation of the charity, frustrating its ability to focus on the future.
43. Furthermore WPCC expressed concern about the impact of complying with the request. In addition to the burden imposed on WPCC, the confrontational nature of the relationship between the complainant and WPCC meant that the exercise of complying with the request would cause further disruption, irritation and distress to the organisation and its staff.
44. WPCC explained that if it believed that complying with the request would resolve the matter, it may have taken the decision to provide the information despite the concerns outlined above. However, it considered that provision of the requested information would likely encourage the complainant to submit additional requests for information relating to

Board decisions. It would result in further unwarranted criticism by the complainant through social media and correspondence with WPCC, as well as prolonging a debate on the lawfulness of WPCC's decisions.

The complainant's position

45. The complainant also provided the Commissioner with detailed and lengthy submissions in support of his position. He also provided some documentation which he requested remained confidential. The Commissioner has referred to this information where required but has not set it out in detail to preserve the integrity of this confidence. All information provided by the complainant has been considered by the Commissioner in making her decision.
46. The complainant was concerned that the creation of a private car park for a local private golf club is a material breach of the 1871 Act. He considered that despite WPCC gaining land for a maintenance building in exchange, a third party should not be able to benefit from the private use of the Commons.
47. The complainant believes that WPCC is refusing to provide the information in order to hide potential mismanagement of the trust. He also disputed that his request relates to historic transactions since the agreements are still in place.
48. The complainant pointed out that the agreement with RWGC places a legal requirement on WPCC to use their best endeavours to incorporate an amendment to the 1871 Act to allow an exchange or lease of common land. The complainant therefore argued that there needed to be transparency around this agreement to try and amend the 1871 Act.
49. The complainant considered that as well as not being in accordance with the 1871 Act, the agreement was not in accordance with charity law designed to protect the commercial value of the land. He considered that even if the exchange of land was lawful, the relative values of the pieces of land are not comparable.
50. The complainant advised that the Charity Commission had opened a statutory inquiry into a previous sale of land at Putney Common, which was ongoing. The complainant stated that the Charity Commission had now concluded that there was mismanagement and misconduct and that the trustees did not follow the law, were not correctly advised and incurred a substantial loss on this sale and that the transaction was not in the best interest of the charity.
51. The complainant acknowledged that the agreement relating to RWGC was put in place some time ago, however, he pointed out that the agreement was still in place and would continue to be in place. The

complainant also explained that the agreement with RWGC places a legal requirement on WPCC to use their best endeavours to incorporate an amendment to the 1871 Act to allow an exchange or lease of common land. The complainant argued that there needed to be transparency around this agreement to try and amend the 1871 Act.

52. The complainant maintained that levy payers should have transparency regarding the relative values of the pieces of land and whether the trustees procured advice to ensure fair value for money was achieved. The complainant considered that the local levy payers were being denied the ability to scrutinise transactions. He confirmed that he was a levy payer.
53. The complainant disputed the burden that would be placed on WPCC as he believed the request could be dealt with by simply placing the information on a "platform" from which it can be accessed. He also considered that time taken to respond to the request would not be disproportionate as the public interest lies in WPCC being transparent regarding its transactions.
54. The complainant confirmed that he is an ex-trustee of WPCC and alleged that he had witnessed the charity ignoring conflicts of interest and collusion when challenged about substantive transactions. He made several allegations of wrongdoing on the part of the WPCC board.
55. The complainant stated that he, and other trustees, had made several complaints to the Charity Commission regarding the management of the charity. The complainant considered that his concerns were supported by the draft conclusion of the Charity Commission's statutory inquiry as provided to the Commissioner.

The Commissioner's position

56. The Commissioner considers that scrutiny of the decisions of a public authority is a fundamental right for those whom the decisions affect. She acknowledges that the complainant has serious concerns regarding the decisions made by the management board of WPCC. The Commissioner has therefore considered whether the complainant's approach is justified and proportionate in order to uncover what he believes constitutes misconduct of the management board. The Commissioner has also considered the extent to which the complainant's concerns have been investigated by other bodies.
57. The Commissioner recognises the complainant's desire to ensure that all decisions are made in the interests of the charity. However she considers that there is clear evidence of obsessive and unreasonable behaviour on his part. Much of the information provided by the

complainant is documentation of his own concerns, with little, if any, independent evidence of wrongdoing by WPCC. The Commissioner has seen no evidence that there are systemic issues, and indeed notes that the decisions relating to the subject of the current request were made by differently constituted management boards in the 1970s and 2005.

58. The Commissioner observes that the complainant's concerns have to a large extent been considered and determined by other bodies. The fact of the statutory inquiry opened by the Charity Commission suggests that some of the complainant's concerns may have merit. However, the complainant provided the Commissioner with commentary regarding the Charity Commission's draft report in which he heavily criticises the Charity Commission for not drawing similar conclusions to his own. The complainant included multiple comments that his actions were justified and requested that the Charity Commission remove any criticism of his actions. The complainant also appeared to doubt the experience of an officer assigned to WPCC by the Charity Commission and asked the Charity Commission to amend its report to include his allegations of motive as factual events. The Commissioner considers this to be evidence of the complainant's unwillingness to accept independent scrutiny which does not align with his own view.
59. The Commissioner further notes that the complainant submitted other complaints to the Charity Commission and assisted in a judicial review about WPCC decisions, in which WPCC were found to be complying with the relevant legislation, whether it be the 1871 Act or the Charities Act.
60. The Commissioner has also considered the nature of the complainant's behaviour towards WPCC and other parties, such as its legal adviser. WPCC has provided the Commissioner with evidence that it has met with the complainant to discuss his concerns on several occasions. Despite this the complainant has continued to allege misconduct and unlawful activity in public forums and in correspondence with WPCC. Having had sight of the relevant information the Commissioner accepts WPCC's description of the complainant's tone and language as intemperate, antagonistic and on occasion, abusive. She considers that there is little justification for such behaviour and acknowledges that it has caused distress and a feeling of harassment among WPCC staff. The Commissioner appreciates that requesters may have strong feelings about issues, but is of the strong view that they should nevertheless be courteous in correspondence.
61. The Commissioner has also considered WPCC's arguments regarding the burden associated with complying with the request. The Commissioner is mindful of the extent of correspondence between the complainant and the WPCC. On the one hand, it could be argued that sustained correspondence was necessary to obtain the information required to

make a case to the Charity Commission. However, the Commissioner does not consider that the complainant's persistence is entirely a result of WPCC's alleged mishandling of a previous land disposal. The complainant's requests and associated correspondence demonstrate his determination to pursue and prolong his wider dispute with WPCC.

62. The Commissioner is mindful of WPCC's relatively small budget and administrative team. It is therefore important to consider at what point correspondence and requests become disproportionate. This is likely to have a higher threshold for public authorities with larger budgets and dedicated information rights teams. The Commissioner notes that the complainant has requested all information relating to the arrangement which, in light of the period of time the agreement has been in place, is likely to encompass a large amount of information. WPCC would need to spend considerable time collating the information and considering it for redaction. Consequently the Commissioner is satisfied that the volume of correspondence from the complainant is disproportionate to his stated aim of scrutinising WPCC's actions.
63. Having reviewed the correspondence provided, the Commissioner considers that history of the complainant's correspondence demonstrates that the complainant is unlikely to ever be satisfied with WPCC's response. She agrees that if WPCC complied with the request, there is a high likelihood that correspondence would continue with no end in sight for WPCC. The Commissioner is satisfied that providing a response to this request would prolong correspondence and places an unfair burden on WPCC in a manner which would be disproportionate to the value of the requested information.
64. The Commissioner is of the opinion that the bar regarding what makes a request "manifestly unreasonable" is, and ought to be, reasonably high. However, in this case the Commissioner is satisfied that WPCC has demonstrated that the request is manifestly unreasonable on the basis that it is vexatious, and compliance would place a disproportionate burden on WPCC. Therefore the Commissioner finds that regulation 12(4)(b) is engaged in the specific circumstances of this case.

Public interest test

65. Regulation 12(4)(b) provides a qualified exception, therefore a public authority may only refuse a request that is manifestly unreasonable if the public interest in maintaining that exception outweighs the public interest in disclosure. Regulation 12(2) of the EIR also provides that the public authority must apply an explicit presumption in favour of disclosure. This means that exempt information must still be disclosed unless there is an overriding public interest in maintaining any exceptions applied.

Arguments in favour of disclosure

66. WPCC acknowledged the presumption in favour of disclosure, and supported the principle of transparency, particularly in decision making. It advised the Commissioner that the newly constituted Board has put in place measures to further support transparency. This includes publishing Board resolutions and operational metrics, holding a second open meeting each year and drafting and publishing a code of conduct and an enquiries procedure.
67. WPCC considered that the publication of board resolutions was of particular relevance to this request for information as decision making for material agreements are recorded and published through Board resolutions. WPCC also considered that the open meetings are particularly important in terms of allowing conservators to understand the matters of greatest interest to members of the public. Therefore WPCC was of the view that it had already taken appropriate action in order to meet the legitimate public interest in transparency.
68. With regard to the complainant's request, WPCC argued that the decision was historic rather than recent. The arrangements were subject to public scrutiny at the time of implementation and when the agreements were revisited in 2005. Given the fact that the matter had already been discussed in the public domain over the course of the intervening 37 years, the public interest in disclosure of the information relating to this agreement was extremely limited.
69. WPCC also pointed out that since at least 2014 the car parking and maintenance centre arrangements with RWGC had seldom been raised with WPCC at open meetings, through WPCC's enquiries process or through other means. This was despite the attention that the complainant had brought to the matter through his extensive and regular use of social media focusing on the matter, including posting his interactions with WPCC. WPCC added that since the request for information was submitted, two open meetings had been held and the RWGC matter had not been raised, nor had any other matter highlighted by the complainant.
70. WPCC also confirmed that the Chairman and Chief Executive periodically met with the MPs representing the constituents in the levy area to understand matters of concern to the public and the RWGC car park had never been considered by them to be of interest to members of the public.
71. The complainant argued that the public interest lay in disclosure in order to allow residents to scrutinise decisions made regarding how their levy fees are paid. He maintained that, if WPCC had acted in accordance with

the 1871 Act and the Charities Act, it should have no concerns regarding publishing the information. The complainant believed disclosure was in the public interest to either uncover mismanagement or reassure residents that decisions are legally sound.

Arguments in favour of maintaining the exception

72. The Commissioner's published guidance⁴ on regulation 12(4)(b) says that many of the issues relevant to the public interest test will have already been considered when deciding if this exception is engaged. This is because engaging the exception includes some consideration of the proportionality and value of the request. The Commissioner has therefore not repeated the arguments already made by WPCC.
73. WPCC argued that there was a strong public interest in maintaining the exception. In engaging the exception it had demonstrated that compliance with the complainant's request would be a disproportionate use of resources. WPCC argued that the public interest lay in protecting its resources and its ability to fulfil its core functions. It also maintained that there was a strong public interest in protecting its staff and associated third parties from unwarranted criticism, harassment and abuse.

Balance of the public interest

74. The Commissioner has carefully considered the public interest arguments put forward by the complainant and WPCC. In order to engage the exception WPCC has demonstrated that the request is manifestly unreasonable on the basis that the request is vexatious, and that compliance would involve a disproportionate burden on its resources. These arguments are relevant when considering the public interest. However it is also essential to attach appropriate weight to the presumption in favour of disclosure, ensuring that a proper balancing exercise is conducted.
75. The Commissioner recognises the legitimate public interest in transparency, especially regarding alleged wrongdoing by a public authority and regarding the use of public funds. She is mindful of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, from which the EIR are drawn.

⁴ <https://ico.org.uk/media/for-organisations/documents/1615/manifestly-unreasonable-requests.pdf>

76. The “three pillars” of the Aarhus Convention are: access to information, public participation and access to justice. Access to environmental information is essential in order to support the other two pillars, especially where there are questions about a public authority’s conduct.
77. The Commissioner disagrees with WPCC’s assessment that there is a limited public interest in favour of disclosure. She also disagrees with its argument that, since the decision is historic, there is little public interest in scrutinising the legality of the arrangement. The Commissioner considers that whilst the decision may be historic, the arrangement itself is ongoing and its impact is therefore still current. The fact that WPCC has not received significant enquiries from the public does not mean that there is no public interest in the matter.
78. However the Commissioner also recognises that WPCC has taken positive steps to increase transparency, such as its publication of Board resolutions. The Commissioner considers that proactive publication of information is often helpful to the public since it means that interested persons can access information without having to make a request.
79. The Commissioner is of the opinion that the complainant’s persistence in this case is wholly disproportionate to the public interest in compliance with the request. The Commissioner acknowledges the complainant’s concerns regarding the running of WPCC, the conduct of the management board and previous decision making. However she is also mindful of the burden that would be imposed on WPCC as a small organisation. She is not persuaded that there is a strong public interest in locating, identifying and considering every piece of information held by WPCC relating to the car park agreement, which is essentially the scope of the request in question.
80. The Commissioner also acknowledges the statutory inquiry opened by the Charity Commission into the valuation of the easement. Whilst she appreciates that this inquiry may validate some of the concerns raised by the complainant, the Commissioner is of the view that the public interest is more likely to be met by the Charity Commission carrying out its investigation, than WPCC complying with the complainant’s request.
81. Furthermore, the Commissioner does not consider that the statutory inquiry should oblige WPCC to continue to engage with the complainant in perpetuity, particularly in light of his confrontational approach to correspondence and social media posts. The Commissioner is not persuaded that the impact of the complainant’s request – and behaviour - is justified by the public interest in compliance.

82. The Commissioner is acutely aware that WPCC, like many public authorities, is facing substantial pressures to provide public services with limited resources. The Commissioner accepts that obliging WPCC to comply with this request would be likely to have an adverse impact on the handling of other requests for information, and the delivery of services generally. The Commissioner is of the opinion that the public interest in maintaining the exception in this case is sufficiently strong to outweigh the public interest in disclosure, even taking into account the presumption in favour of disclosure.

Right of appeal

83. 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@justice.gov.uk

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

84. 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.
85. 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

Sarah O’Cathain
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SK9 5AF