

Freedom of Information Act 2000 (Section 50)

Environmental Information Regulations 2004

Decision Notice

Date: 27th June 2011

Public Authority: Stockport Metropolitan Borough Council
Address: Town Hall
Edward Street
Stockport
SK1 3XE

Summary

The complainant made 51 requests for information from Stockport Metropolitan Borough Council ("the Council"), between 13 January 2010 and 8 May 2010 relating to land and financial issues associated with a school development. The Council refused to comply with the requests on the grounds that it considered them to be vexatious under section 14 of the Freedom of Information Act 2000 and manifestly unreasonable under regulation 12(4)(b) of the Environmental Information Regulations 2004 and as such, advised the complainant she would not receive a response to her requests. The Commissioner finds that the Council correctly applied section 14(1) to some of the requests and that regulation 12(4)(b) was correctly applied to the environmental information.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Act. This Notice sets out his decision.
2. The Environmental Information Regulations (EIR) were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Commissioner. In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR.

Background

3. The complainant has made a number of previous section 50 complaints against the Council to the Commissioner regarding the plans by the Council to build a new school on Harcourt Street, Reddish ('the school development'). In February 2009, the Council informed the complainant it would no longer be responding to her requests about the school development as it considered them to be vexatious under section 14(1) of the Act and manifestly unreasonable under regulation 12(4)(b) of the EIR. The Council's decision was subject of a complaint to the Commissioner following which a Decision Notice (DN) was issued on 10 November 2009 (the 2009 DN)¹. In this previous case the Commissioner upheld the council's use of section 14(1) and regulation 12 (4) (b).

The Requests

4. Since the 2009 DN was issued for the previous case, the complainant has made numerous additional requests to the Council on the subject of the school development. The Council has maintained its stance not to respond to any of the complainant's requests, all of which have been deemed to be vexatious and manifestly unreasonable.
5. 51 requests to the Council have been made via the 'What do they know' website from 13 January 2010 to 10 May 2010. It should be noted that the 51 requests were made over a period of eight days within the time frame identified. Due to the volume of these requests the Commissioner has not detailed these in this notice. However the Commissioner is satisfied that the requests were all for information relating to the school development covering issues such as financial irregularities, emissions, contamination of the land, costs of development, congestion and public rights of way. The Council has relied upon section 14(1) and regulation 12 (4) (b) to refuse to respond to these requests.

¹Reference FS50232537

The Investigation

Scope of the case

6. The Commissioner has considered whether the Council was correct to apply section 14(1) of the Act and regulation 12(4)(b) of the EIR, the 'manifestly unreasonable' exception.

Chronology

7. On 7 February 2010, the complainant contacted the Commissioner to complain about the Council's refusal to answer any of her information requests on the basis that it considered the requests to be vexatious.
8. On 15 February 2010, the Commissioner advised the complainant to request an internal review.
9. Following receipt of the internal review on 31 May 2010, the complainant made a complaint to the Commissioner about the Council's handling of her 51 requests.
10. On 23 June 2010, the Commissioner wrote to the Council advising a complaint had been received in relation to the Council's handling of 51 requests for information on various dates between 13 January 2010 and 8 May 2010.
11. The complainant continued to email the Commissioner, attaching further information in the form of internet newspaper articles on the school development and to seek updates on the progress of the investigation into her complaint against the Council.
12. On 7 January 2011, the Commissioner wrote to the Council requesting further arguments as to why it considered the 51 requests to be vexatious and manifestly unreasonable and received a detailed response on 14 February 2011.

Analysis

Substantive Procedural Matters

Applicable Legislation

13. Environmental Information is defined in regulation 2(1) of the EIR and includes information on plans likely to affect the state of the elements of the environment. The full wording of this regulation is provided at the legal annex to this notice.
14. The Commissioner takes the view that this is a request where the provisions of both the Act and the EIR will apply. In reaching this view the Commissioner has considered the wording of the 51 requests, the vast majority of which relate to building and redevelopment projects which he considers would qualify as measures likely to affect the state of the land and landscape. Any information on these projects would therefore fall within the definition of environmental information. The remaining requests, whilst linked closely to this same topic relate more to costs and the Council's rules, guidelines, policies and procedures. This would not be environmental information and would fall to be considered under the provisions of the Act.
15. The Commissioner has concluded that if any information were held, then they would likely contain a mixture of environmental information and non-environmental information.

Section 14 – Vexatious or repeated requests

16. The Commissioner has considered whether the Council correctly applied section 14(1) of the Act.
17. Section 14(1) states:

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious”.
18. The Commissioner's Awareness Guidance on the subject of vexatious and repeated requests² states:

“Deciding whether a request is vexatious is a balancing exercise taking into account the context and history of the request. The

²http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/awareness_guidance_22_vexatious_and_repeated_requests_final.pdf

key question is whether the request is likely to cause unjustified distress, disruption or irritation. In particular, you should consider the following questions:

- Could the request fairly be seen as obsessive?
- Is the request harassing the authority or causing distress to staff?
- Would complying with the request impose a significant burden in terms of expense and distraction?
- Is the request designed to cause disruption or annoyance?
- Does the request lack any serious purpose or value?"

Context and history

19. The Council provided the Commissioner with an extensive summary of events to demonstrate that it has considered the requests in the context and history of the issue. A request may not be vexatious in isolation but when considered in context it may form a wider pattern of behaviour that makes it vexatious. This was the view of the Tribunal in *Betts v Information Commissioner EA/2007/0108*.
20. The Commissioner considers that it is the request, not the requester, that must be vexatious and therefore consideration has been given to the five questions set out at paragraph 18.

Could the request fairly be seen as obsessive?

21. In his Awareness Guidance on the subject of vexatious and repeated requests the Commissioner recognises that obsessive requests are usually a very strong indication of vexatiousness. The guidance states that:

"Relevant factors could include the volume and frequency of correspondence, requests for information the requester has already seen, or a clear intention to use the request to reopen issues that have already been debated and considered".

22. The Council has submitted that the complainant has made in the region of 328 information requests since the introduction of the Act. Following the issue of the Decision Notice on 10 November 2009, as discussed in paragraph 3, the complainant has submitted 178 requests for information, 73 of which have been about the school development.
23. The Council advised that the complainant makes numerous requests simultaneously and that further requests are made before previous requests have received a response. The Council has also advised the complainant has stated in the 'What Do They Know' website that "*She*

will not rest until the matter of Harcourt Street is resolved to her satisfaction".

24. The Council advised the Commissioner that every request about the school development made during this period received a response advising the information will not be disclosed on the grounds that the Council considers the complainant's requests on this topic to be vexatious and manifestly unreasonable. The Council considered its internal review that formed part of the matter considered in the 2009 DN remained valid. The Council considered the complainant's numerous requests, which she has made continued to place a significant burden on its employees and for it to carry out an internal review on every single request would in its view somewhat defeat the object of taking the course of action of declaring the complainant vexatious.
25. In relation to the frequency of requests, analysis of the 51 requests relevant to this complaint shows that they were made over a period of eight days within the time frame identified, with the complainant submitting up to 19 requests in one day.

Is the request harassing the authority or causing distress to staff?

26. The Commissioner states in his Awareness Guidance on the subject of vexatious and repeated requests that:

"The focus should be on the likely effect of the request (seen in context), not on the requester's intention. It is an objective test – a reasonable person must be likely to regard the request as harassing or distressing. Relevant factors under this heading could include the volume and frequency of correspondence, the use of hostile, abusive or offensive language, an unreasonable fixation on an individual member of staff, or mingling requests with accusations and complaints".

27. As was previously stated in the 2009 DN, the complainant's requests by themselves do not contain any evidence of deliberate harassment. However, when put into the context of her long running campaign against the Council and the correspondence connected to that, the Council has argued that the request can be said to have the effect of harassing the Council.
28. The Commissioner has considered the evidence submitted by the Council of the volume and frequency of requests as stated in paragraph 25. He agrees with the Council that the cumulative effect of the requests has the effect of harassing and causing distress to staff.

29. The Council has also argued that the language used by the complainant is designed to harass and distress staff and has at times contained what it has described as "*entirely inappropriate comments about staff*". In particular the complainant has stated that she will not rest until the matter of the school development is resolved to her satisfaction and that she believes the Council and its officers are corrupt.
30. The Council provided evidence to the Commissioner showing it had written to the complainant on a number of occasions asking her to modify her requests and behaviour, because it considered the requests to be placing an undue burden on its employees involved in responding to the matters raised. The Council asked the complainant to forward her requests through its FOI Officer as a single point of contact. However, the complainant continued to email other employees directly. The Council wrote to the complainant on several further occasions asking that she reduce the number of requests she was making about the school development because they were placing a significant burden on the Council. Despite this the complainant continued to make numerous FOI requests and send large volumes of related correspondence to Council Members and employees on the subject of the school development.
31. The Council has advised that the complainant has been a constant correspondent for a number of years and the school development is one of a number of themes and campaigns the complainant has been associated with. The Council advised that the complainant has made at least 561 requests for information on a variety of topics since the Act came into force. Furthermore, excluding FOI/EIR requests, it has received between 400 to 500 emails from the complainant regarding the school development since November 2009 and recently responded to a subject access request under the Data protection Act 1998 from the complainant where the majority of the information provided was correspondence she had sent to the Council, and emails generated as a result of that, totalling 454 Megabytes in size.
32. The Commissioner considers that the available evidence demonstrates that the requests can be objectively seen as harassing the authority or causing distress to staff.

Would complying with the request impose a significant burden in terms of expense and distraction?

33. The Commissioner's Awareness Guidance on the subject of vexatious and repeated requests states that:

" You need to consider more than just the cost of compliance. You will also need to consider whether responding would divert or distract staff from their usual work."

34. In order to demonstrate the above, in their response to the request the Council stated that the complainant's requests were and still are placing a significant burden on its resources, and has advised that the requests and comments made by the complainant (see paragraph 23), demonstrate that she is making the requests to disrupt and harass its activities.
35. The Council has told the Commissioner it has been open and transparent in relation to the school development and had previously provided the complainant with a substantial amount of information on the subject. The Council has advised that every piece of information it provides to the complainant generates at least one further request along with numerous pieces of correspondence to various employees and Council Members, as well as correspondence to contractors and private companies carrying out work on the Council's behalf. This has included allegations of wrongdoing on the part of the Council and creates additional work for Council officers who have to respond to concerns raised by the complainant by providing evidence that it has acted appropriately.
36. The Council highlighted the fact that the complainant has sent over 20 emails to its Corporate Director (Business Services) between September 2009 and February 2010 regarding alleged financial irregularities. This is despite the fact that the Audit Commission has already considered her concerns and found there is no action to take. Employees have expressed concern regarding the burden placed on them by responding to the complainant's requests which it considers are often offensive and rude, and which take them away from their core duties for significant amounts of time and pose a significant burden to the authority's resources.
37. The Commissioner acknowledges the volume of requests as mentioned in paragraph 22 and notes the Council has further argued that the request figures are significantly understated as numerous emails from the complainant on the issue receive direct responses rather than being treated as freedom of information requests.
38. In order to support its claim that the request imposes a significant burden, the Council has also stated that most responses it sends to requests generate a string of correspondence and subsequent requests, a number of which are repeated or for substantially similar information. The Commissioner would consider that this adds to the evidence to suggest that complying with the complainant's requests

would impose a significant burden in terms of expense and distraction and refers to the Tribunal decision in *Betts v Information Commissioner* [EA/2007/0108] in which it was stated that it may be reasonable for a public authority to conclude that compliance would result in a significant burden if in answering that request it was:

"...extremely likely to lead to further correspondence, further requests and in all likelihood, complaints against individual officers..." (paragraph 34).

39. The Commissioner acknowledges the complainant's assertion that she is "*not vexatious but very thorough*". Nevertheless, after taking into account the above factors the Commissioner is satisfied that the requests in question impose a significant burden in terms of expense and distraction.

Is the request designed to cause disruption or annoyance?

40. The Council has argued that the requests are designed to cause disruption and annoyance due to their tone and nature, and by submitting numerous and often repeated requests in relation to the school development. It has informed the Commissioner that the complainant had, as at 20 February 2009, made 279 FOI requests of which at least 159 were on the topic of the school development. Prior to this date the Council had asked the complainant on a number of occasions to modify her behaviour because the volume and frequency of her requests were placing an unacceptable burden on it and diverting a disproportionate amount of resources from its core business.
41. However, as this factor relates to the requester's intention and the complainant has not explicitly stated that she wants to cause disruption or annoyance in relation to this request, the Commissioner cannot conclude that this element of vexatiousness is present.

Does the request lack any serious purpose or value?

42. The complainant has stated that the purpose of this request is to:

"...answer the questions. The issues I am raising need to be addressed and not shoved under the carpet. Most pressing to me is not the huge cost but the issue of asbestos fibres, even one of which can cause cancer, being vented with the landfill gases into the school and playground area...that is most certainly not being vexatious".

43. The Council has previously acknowledged that the wider issue of the construction of any new school has a high public interest and that it

should respond to a reasonable amount of requests from members of the public to find out information about the scheme. It has advised the Commissioner that it respects the rights of individuals to campaign and continues to provide information on this topic proactively and following requests from other applicants. However, it has argued that, in reviewing the types of questions the complainant has asked and the frequency of them, it considers it has a duty to protect public funds and cannot keep responding to an excessive number of requests on same subject.

44. The Commissioner is of the opinion that the requests do have a serious value or purpose. However this is not enough in itself to prevent the requests being vexatious. This position follows the Tribunal's ruling in *Betts v Information Commissioner* [EA/2007/0109] which found that:

"...the Appellant's refusal to let the matter drop and the dogged persistence with which he pursued his requests, despite disclosure by the Council and explanations as to its practices, indicated that the latter part of the request was part of an obsession. The Tribunal accepted that in early 2005 the Appellant could not be criticised for seeking the information that he did. Two years on however and the public interest in openness had been outweighed by the drain on resources and diversion from necessary public functions that were a result of his repeated requests..." (paragraph 38).

Summary

45. The Commissioner considers that the requests can be fairly characterised as obsessive, and have the effect of harassing the Council, causing distress to staff and imposing a significant burden in terms of expense and distraction. The Commissioner does not find that the request is designed to cause disruption or annoyance or lacks serious purpose or value. However, the Commissioner is satisfied that on balance, taking into account the context and history, the requests are vexatious. He therefore concludes that section 14(1) was correctly applied to the extent that the requests were not for environmental information.

Regulation 12(4)(b) - Manifestly Unreasonable'

46. Regulation 12(4)(b) states that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable.

47. Whilst the Commissioner has issued no specific guidance on 12(4)(b) he is satisfied that the principles to be considered when looking at a case under section 14 of the Act are also relevant when considering if a request is manifestly unreasonable under regulation 12(4)(b) and notes that this approach has been supported by the Tribunal in *Stephen Carpenter v Information Commissioner & Stevenage Borough Council* [EA/2008/0046].
48. In the circumstances of this case the Commissioner considers that the arguments provided by the Council supporting the application of section 14(1) also demonstrate that the requests for environmental information are manifestly unreasonable under 12(4)(b).

Public Interest arguments in favour of disclosing the requested information

49. In accordance with regulation 12(1)(b), even if an exception is engaged, public authorities can only refuse to disclose information if, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information. It should be noted that under regulation 12(2) there is a presumption in favour of disclosure.
50. In favour of disclosure the Commissioner considers that the general purpose of the EIR is to enable the public to access information which affects or is likely to affect the environment. This has the clear benefits of promoting accountability and transparency as well as enabling individuals to access information which may help them to challenge a decision made, or an action taken by the public authority. This in turn promotes a sense of democracy and public participation.
51. The Commissioner also recognises that in this particular case, where the wider issue relates to a new school development, there is a high public interest and it is important that the public are reassured that the Council is showing regard to proper procedures and acting responsibly in respect of spending of millions of pounds.
52. Furthermore the Commissioner accepts that the building of a new school on land which has given rise to public concerns about environmental and health and safety issues is of high public interest. In this case some of those concerns relate to emissions and asbestos contamination which has understandably attracted local media scrutiny, particularly as it affects a significant number of people in the local area.

Public Interest arguments in favour of maintaining the exception

53. On the other hand the Commissioner feels that there are compelling arguments in favour of maintaining the exception because of the public interest in protecting the integrity of the EIRs and ensuring that they are used responsibly. While public authorities are being encouraged towards goals of transparency and accountability which benefit the public as a whole, it is not the intention of the legislation to tolerate requests which are burdensome to public officials and are an unreasonable use of a public authority's resources. If this was the case, the Commissioner considers that the legislation would be seriously undermined.

Balance of the public interest arguments

54. In weighing these considerations in the balance, the Commissioner has had regard to the fact that the volume of requests submitted over a period of time has placed a significant burden on the Council's resources. To continue to respond would disrupt the everyday work of the Council, diverting a disproportionate amount of resources from its core business. He has also taken into account the fact that the Council has proactively provided information on the school development to the public to provide reassurance as to the steps it has taken to address health and safety concerns and in response to the complainant's previous requests. Additionally, the Commissioner notes that the issue of financial irregularities connected to the proposed school had previously been considered by the Audit Committee who specifically found that there was no action to take. The Commissioner has also considered the Council's submission that it does not seem likely that responding to the request will satisfy the complainant. The Council considers that regardless of the information it proactively publishes and provides in response to requests, the complainant continues to question the Council's motives, alleges various wrongdoings and maintains that it is not open honest and transparent. In this case the Commissioner considers that these requests would impose a very significant burden upon the Council, which would not be proportionate in the circumstances of the case, despite the Commissioner recognising the serious purpose and value behind the requests.
55. In view of the above, the Commissioner considers that in all the circumstances of this case, the public interest in maintaining the exception under 12(4)(b) outweighs the public interest in disclosing the information and therefore finds that the requests (to the extent that they were for environmental information) to be manifestly unreasonable.

The Decision

56. The Commissioner's decision is that the Council correctly withheld the requested information, which is not environmental information, under section 14(1) of the Act. In relation to the information requested which is environmental information it correctly applied regulation 12(4)(b) of the EIR in order to withhold this information.

Steps Required

57. The Commissioner requires no steps to be taken.

Other Matters

Internal review

58. The complainant in this case has submitted 51 requests to the Council via the 'What do they know' website. The Council advised the Commissioner it has responded to each request, refusing it on the grounds that the complaint's requests on this topic were considered to be vexatious under section 14(1) of the Act and manifestly unreasonable under regulation 12(4)(b) of the EIR.
59. The complainant requested an internal review on each occasion the Council refused her request but was advised that her request for an internal review would not receive a response. The Council advised the complainant that an internal review was carried out in 2009 and that the outcome of that review remained valid.
60. The Council advised the Commissioner that it took the decision to refuse the complaint's requests after much discussion and after numerous attempts to resolve the matter with the complainant through asking her to moderate her requests and behaviour. The Council advised that the requests were and still are placing a significant burden on Council employees and that it would take a significant amount of time to carry out the internal reviews in question. It was the Council's view that it would not seem to be appropriate to interpret the Act/EIRs as requiring internal reviews to be carried out under such circumstances.

61. Unlike the Act, the EIRs contain a legal obligation on a public authority to provide an internal review. Regulation 11 of the EIR states that a public authority must reconsider its decision in light of any representations made by the applicant. The time limit for this review is 40 working days. On this occasion the Commissioner has chosen to accept this complaint despite the Council not carrying out internal reviews under EIR for each of these requests as requested by the complainant to avoid any further undue delay to the complainant. However this is not his normal practise and he therefore reminds the Council of its obligation to carry out an internal review under EIR.

Right of Appeal

62. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

63. 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.
64. Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 27th day of June 2011

Signed

**Pamela Clements
Group Manager, Complaints Resolution**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Freedom of Information Act 2000

Time for Compliance

Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

Vexatious or Repeated Requests

Section 14(1) provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious”.

Refusal of Request

Section 17(5) provides that –

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

Environmental Information Regulations 2004

Regulation 2 - Interpretation

Regulation 2(1) provides that -

“the Act” means the Freedom of Information Act 2000(c);

“applicant”, in relation to a request for environmental information, means the person who made the request;

“appropriate record authority”, in relation to a transferred public record, has the same meaning as in section 15(5) of the Act;

“the Commissioner” means the Information Commissioner;

“the Directive” means Council Directive 2003/4/EC(d) on public access to environmental information and repealing Council Directive 90/313/EEC;

“environmental information” has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form 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;
- (d) reports on the implementation of environmental legislation;
- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c) ; and
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of elements of the environment referred to in (b) and (c);

“historical record” has the same meaning as in section 62(1) of the Act;

“public authority” has the meaning given in paragraph (2);

“public record” has the same meaning as in section 84 of the Act;

“responsible authority”, in relation to a transferred public record, has the same meaning as in section 15(5) of the Act;

“Scottish public authority” means –

- (a) a body referred to in section 80(2) of the Act; and
- (b) insofar as not such a body, a Scottish public authority as defined in section 3 of the Freedom of Information (Scotland) Act 2002(a);

“transferred public record” has the same meaning as in section 15(4) of the Act; and

“working day” has the same meaning as in section 10(6) of the Act.

Exceptions to the duty to disclose environmental information

Regulation 12(4) provides that –

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

- (a) it does not hold that information when an applicant’s request is received;
- (b) the request for information is manifestly unreasonable;
- (c) the request for information is formulated in too general a manner and the public authority has complied with regulation 9;
- (d) the request relates to material which is still in course of completion, to unfinished documents or to incomplete data; or
- (e) the request involves the disclosure of internal communications”.

Refusal to disclose information

Regulation 14(2) provides that –

“The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request”.

Regulation 14(3) provides that –

“The refusal shall specify the reasons not to disclose the information requested, including –

- (a) any exception relied on under regulations 12(4), 12(5) or 13; and
- (b) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3)”.

