

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 19 December 2011

Public Authority: Torfaen County Borough Council

Address: Civic Centre
Pontypool
NP4 6YB

Decision (including any steps ordered)

1. The complainant requested copies of planning decisions for the last ten years in an electronic format. Torfaen County Borough Council ('the Council') refused the request under regulation 12(4)(b) of the Environmental Information Regulations 2004 ('the EIR') as it considered the request to be manifestly unreasonable.
2. The Commissioner's decision is that the Council was correct to apply regulation 12(4)(b) to the request and that the public interest favours maintaining the exception in this instance
3. The Commissioner requires no steps to be taken.

Request and response

4. On 25 April 2011, the complainant wrote to the Council and requested information in the following terms:
 - "How far back do the planning records go. Those available online are only go back as far as July 2010
<http://www.torfaen.gov.uk/EnvironmentAndPlanning/Planning/PlanningPermission/PlanningDecisions.aspx>
 - What formats are the decisions are held in. By this I mean are they simply held in date order pdf scans or are they also held other formats e.g.xl

- Whether there is a dataset of decisions held in searchable format. By this I mean, can a property be searched with reference only to house number and postcode?
- What process does the Authority [sic] to access and receive responses to planning queries needed for the completion of its Con29?"

The complainant stated that he lived "too far away to realistically research the same regularly and as such needed to be able to carry out research remotely or receive a data dump of all decisions going back the last ten years".

5. The Council responded on 26 April 2011 stating that the request was formulated as a series of questions rather than a request for specific information. The Council confirmed it held information relevant to the request but stated it was not held in an electronic format that could be easily accessed. The Council stated it was refusing the request for copies of planning decisions for the last ten years under regulation 12(4)(b) of the EIR as it considered the request to be manifestly unreasonable.
6. The Complainant contacted the Council on 28 April 2011 and requested an internal review of its decision in relation to his request. He also asked the Council to reconsider his request of 25 April 2011 under the provisions of the Freedom of Information Act 2000 ('the Act') as opposed to the EIR.
7. The Council replied on 9 May 2011 and responded to the first parts of the request. On 16 May 2011 the Council provided the outcome of its internal review. It confirmed that, in relation to the request for copies of planning decisions for the last ten years, it upheld its decision that the request was manifestly unreasonable.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
9. The initial request for copies of planning decisions over the last ten years is somewhat unclear in that the complainant stated that he wished to "receive a data dump of all decisions going back the last ten years". In his email to the Council of 28 April 2011 the complainant stated that he believed planning decisions were held in the form of PDF documents

and suggested that the Council provide him with a DVD containing the relevant information. In his complaint to the Commissioner of 5 July 2011 the complainant stated that he wished to receive "either a copy of the planning records/decisions on disk going back 10 years, but would prefer a copy of the data which the Authority uses for its own research.

10. From his correspondence with both the Council and the Commissioner, it is clear to the Commissioner that the complainant is seeking access to planning decisions over the last ten years in an electronic format. It is also clear that the Council has interpreted the request in this way.
11. The Commissioner has therefore considered this complaint to relate to whether the Council was correct to treat the request for electronic copies of all planning decisions notices for the last ten years as being manifestly unreasonable.

Reasons for decision

12. Regulation 12(4)(b) of the EIR states a public authority may refuse to disclose environmental information if the request is manifestly unreasonable. This exception to disclosure is subject to the public interest test and a public authority may only refuse to disclose information where the public interest in maintaining the exception outweighs the public interest in disclosure.
13. In this case the Council's position is that the time required to comply with the request makes it manifestly unreasonable. In effect it said that to comply with the request would place an unreasonable burden on its resources in terms of expense and distraction.
14. The EIR do not contain a definition of the term 'manifestly unreasonable' but the Commissioner's opinion is that 'manifestly' implies that a request should be obviously or clearly unreasonable. In this case the focus is on the time required to comply with the request. There is no direct equivalent in the EIR of section 12 of the Act, which places a limit on the time a public authority need spend on compliance with a request (24 hours for central government organisations and 18 hours for other public authorities, such as the Council). However, the Commissioner considers that, if the Council is able to demonstrate the time (and therefore the expense) of complying with the request is obviously unreasonable, regulation 12(4)(b) will be engaged.
15. The Council stated that weekly lists of planning applications and decisions are published on the planning pages on its website, and

updated to remain current from week-to-week, and older lists are removed from the website. This information therefore relates to a limited time frame. In terms of planning documents, the Council advised that it utilises several systems to hold and record planning related information. Planning decisions are held within its dedicated electronic system known as APAS. APAS is not publicly accessible due to its specialised software and user licence. However, members of the public are allowed to view planning information through the APAS system or subsidiary systems such as the GIS mapping system using a computer set up in its County Hall office. This allows for properties to be searched by reference to a house number or post code.

16. In response to the Commissioner's request for further evidence to support the view that the request was manifestly unreasonable, the Council provided a number of estimates of the time for compliance taking into account different methods of providing the information.
17. The Council stated that, on average between 600 and 1000 planning decisions are made each year. For a ten year period, the Council has estimated that it holds between 6,000 and 10,000 planning decisions. It confirmed that, for the time period covered by the request the majority of planning records are held electronically although they are not necessarily stored in a complete, easily readable format.
18. Planning decision notices are held within APAS as separate components such as application details, name, address, site, proposal and decision type approval/refusal and any associated conditions, reasons and notes relating to the application. Following the completion of a planning application, the system produces a composite decision notice in MS Word 2003 format. The decision notice is then stored using a document diary function available within each planning application record stored within APAS. Decision notices exist as separate Word files, but are indexed with a numerical reference number as opposed to being stored based on the applicant name or site details. As such the filename is virtually meaningless without the use of APAS system to link it to the appropriate application record.
19. In order to provide electronic copies of all planning decisions over the last ten years, each planning application record would need to be retrieved from APAS. It would then be necessary to navigate to the document diary section of the record in order to view the decision notice. The document diary contains all materials produced during the lifecycle of the planning application. For simple planning applications, this may only mean retrieval of around a dozen electronic documents, for an average planning application there would be around 20 to 50 documents and for major schemes there could be hundreds or even

thousands of documents. The Council advised that the diary has to recall all documents before any can be accessed, however, the planning decision notice is reasonably easy to recognise from the document diary list. Once located, the decision notice has to be viewed on screen which then allows the document to be saved using a different filename and/or format, or printed. Using a print-to-PDF tool the Council would be able to convert the planning decision into an appropriate format, rename it and save it in a new filing system which would allow appropriate indexing and retrieval.

20. The Council has provided two estimates which refer to extracting and converting decisions held electronically within its APAS system into PDF files (option 1) and scanning paper copies of planning decisions into PDF format (option 2). The cost estimates for both options are details below:

Option 1

- (i) Accessing APAS to obtain records for 1 ten year period – total 5 minutes.
- (ii) Recalling records from APAS – total 5 minutes.
- (iii) Select each individual planning record from the initial overview screen (taking into account the response time of the system) – 0.5 minutes per record.
- (iv) View/Print/Convert each decision notice – 2 minutes per record.

For 6000 decision notices (600 per annum), the estimate equates to 250 hours (6,000 X 2.5 minutes = 15,000 minutes)

For 10,000 decision notices (1000 per annum), the estimate equates to over 416 hours (10,000 X 2.5 minutes = 25,000 minutes)

Option 2

Paper copies of planning decision notices are held as A4 documents within standard ring-binders which stored in chronological order. The Council advised that some of the older documents may be dog-eared, folded, otherwise damaged or may require re-printing. In order to retrieve the paper copies, it would be necessary to locate the correct ring-binders, remove any staples, flatten any creased or folded documents, print and damaged documents and locate and re-print any missing decision notices. The size of decision notices varies from 1 to 20 pages. Once each document has been prepared for scanning, it then needs to be scanned and each scanned file will then need to be named or referenced or appropriately to allow for subsequent indexing and retrieval. The Council's estimate for option 2 is detailed below:

- (i) Retrieval time for ten years' worth of records – 1 minute per record.
- (ii) Prepare decision notice for scanning – 1 minute per record.
- (iii) Scan, rename and index each record – 3 minutes per record.

For 6000 decision notices (600 per annum), the estimate equates to 500 hours (6,000 X 5 minutes = 30,000 minutes).

For 10,000 decision notices (1000 per annum), the estimate equates to over 833 hours (10,000 X 5 minutes = 50,000 minutes).

21. The Commissioner notes that the Council's estimate for complying with the request varies from 250 hours (6,000 records under option 1) to over 833 hours (10,000 records under options 2). Based on these estimates, even assuming the lower estimate for the number of decision notices and the most efficient method of compliance, the burden on the Council is obvious (250 hours = over 6 weeks work for one person working 7.5 hours a day).
22. The Council has confirmed that an alternative method of complying with the request would be one that would purely utilise its Geographical Information System (GIS). This system has geospatially referenced data which would allow sites to be located on a map by reference to address/postcode. However, it would only show limited planning decision information such as its category (approved/refused) and relevant dates associated with the application and decision. It would not reflect any conditions, or reasons relating to the decision.
23. The Council advised that this third option has its own complications. The native format of the data would be MapInfo Tab file which could be converted into alternative formats, but it would require specialised GIS software to view and manipulate the data, together with accompanying underlying Ordnance Survey base mapping data in order for the information to have any context or relevance. The terms of the Council's licence would not allow it to provide the OS basemaps and as such the applicant would also need to arrange suitable agreement for the provision and use of such data. In addition, the applicant would require specific software systems in order to view the Council's planning data. The Council advised that, based on its knowledge and experience a quick estimate for the cost of the GIS package is several hundred pounds with annual licence fees of around a thousand pounds. The costs and implications of providing the relevant software, requisite licences and/or agreements could not be justifiably met by the Council for one individual.

24. The complainant has stated that his preference would be to receive “a copy of the data the Authority uses for its research”. In effect, this would require a copy of the Council’s APAS system. The Council has confirmed APAS is provided under licence. The initial installation costs of the software can vary and as the system has been in use since around 2004, the Council is unable to provide an accurate cost of a further single installation, although it believes that a fresh deployment and maintenance of APAS would cost thousands of pounds, even for a low number of users. Previous discussions suggest that APAS has a cost of around £8,000 initially with licensing costs applied each year. In addition, such an individual solution for the applicant in this case may also be unacceptable to the supplier of the system and the Council’s own IT department supplier as being incompatible with its data security and protection measures.
25. In reaching a decision as to whether the request is manifestly unreasonable in this case, the Commissioner has taken into account the following factors:
- The appropriate limit in the Act is 18 hours. If a public authority estimates that to comply with a request made under the Act will exceed this limit it is not obliged to comply.
 - While there is no equivalent limit in the EIR, the Commissioner considers that the Council’s estimate of the time it would take to comply to be so far in excess of the appropriate limit set out in the Act as to make the request clearly unreasonable.
 - The estimates submitted by the Council indicate that compliance would place a significant burden on the Council (a minimum of 6 weeks work for one person).
 - Compliance with the request would clearly distract the Council’s Planning Policy team from its core duties.
 - There are no reasonable alternatives in order to comply with the request in full.
26. The Commissioner considers that the request for access to all planning decisions over a ten year period can correctly classed as manifestly unreasonable. He accepts that compliance with the request would require a disproportionate amount of work on the Council’s part in relation to its resources and an unreasonable diversion of those resources away from its core functions.

27. The request in this case is quite broad and a significant amount of information is caught by the request (between 6,000 and 10,000 planning decision notices). Even if the processes involved in complying with the request were to only take an average of 1 minute for each decision notice, and assuming the lower estimate for the number of planning decision notices, this would still equate to a considerable burden on the authority, as it would still require 100 hours of work (6,000 x 1 minute = 100 hours = 2 ½ weeks work for one person working 7.5 hours a day).
28. Based on the evidence submitted by the Council, the Commissioner accepts that the exception at regulation 12(4)(b) is engaged in this case.

Public interest test

29. Regulation 12(4)(b) is a qualified exception and therefore subject to the public interest test at regulation 12(1)(b) which states that information can only be withheld if in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosure.

Public interest arguments in favour of disclosing the information

30. There is an inherent public interest in disclosure of information to ensure that the Council is transparent about the nature and extent of the information that it gathers records in relation to planning applications and decisions. Increased transparency and accountability could lead to the Council being more aware that its processes could be open to public scrutiny. In order to facilitate increased scrutiny, the Council might improve its record management, processes for collating information, and facilities for accessing such information.
31. There is a public interest in information in planning decisions being taken by public authorities in an open and transparent way. However, the Commissioner notes that all of the information requested is available to view, on site at the Council's offices. This fact, to an extent, weakens the arguments around transparency and accountability which favour disclosure of the information as the information can be said to be already publicly available. However, the Commissioner accepts that it would take a considerable amount of time in order to view the requested information in situ.

Public interest arguments in favour of maintaining the exception

32. The Commissioner is sympathetic to the arguments around volume and the amount of resources that would need to be required to comply with the request in this case. He believes that it is unreasonable to expend at least 250 hours work to provide the requested information in the format specified particularly in times when resources are stretched. Indeed the request exceeds by more than thirteen times the costs limit of the Act which provides similar protection to the public authority.
33. The Commissioner considers there is a strong public interest in the Council being able to carry out its core functions without the disruption that would be caused by complying with requests that would impose a significant burden in terms of both time and resources. The Commissioner is of the view that there is a very strong public interest in public authorities being able to carry out their wider obligations fully and effectively, so that the needs of the communities they serve are met. The Commissioner is also mindful of the fact that the public authority's ability to comply with other more focused requests for information would be undermined if it had to routinely deal with wide ranging requests for large amounts of information.

Balance of public interest arguments

34. The Commissioner recognises that the appropriate limit is not a barrier to the disclosure of information under the EIR. However, he considers that the appropriate limit is a useful benchmark for assessing the costs involved in responding to requests for information. Had the public authority's estimate of the costs it expects to incur in dealing with this request only just exceeded the appropriate limit, the Commissioner would have been more inclined to decide that the public interest in maintaining the exception does not outweigh the public interest in disclosure. However, it is clear that in this case the costs of complying with the request would considerably exceed the appropriate limit. The Commissioner believes the obvious burden that would be placed on the Council and the consequent distraction from its other core functions outweighs any benefits to the public interest that would be served by complying with the request. This leads the Commissioner to find that, in the circumstances of this case, there is greater weight in the public interest in favour of maintaining the exception. The Commissioner therefore concludes that the Council was correct to consider that the request is manifestly unreasonable.

Right of appeal

35. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

36. 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.
37. 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

Anne Jones
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