

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

Date: 13 November 2012

Public Authority: Isle of Anglesey County Council
Address: Council Offices
Llangefni
Anglesey
LL77 7TW

Decision (including any steps ordered)

1. The complainant requested information about planning agreements which the Isle of Anglesey County Council ('the Council') had entered into from 1 January 2000 to 31 December 2011. The Council initially stated that it did not hold the information requested, and later, in its internal review it alluded to compliance with the request exceeding the appropriate cost limit under the FOIA. During the course of the Commissioner's investigation, the Council agreed that the request was for environmental information and the correct access regime was the EIR. The Council sought to rely in regulation 12(4)(b) as it considered the request to be manifestly unreasonable. The Commissioner's decision is that the request is manifestly unreasonable and the Council was entitled to refuse it under regulation 12(4)(b) of the EIR.

Request and response

2. On or around 4 February 2012, the complainant wrote to the Council and requested information in the following terms:

"This is a request under the Freedom of Information Act 2000 for that recorded information which you hold in relation to the following:

1. The parties with whom the Council has contracted under agreements authorised by Section 106 of the Town and Country Planning Act 1990 as amended by Planning and Compensation Act 1991 Section 12 from 01/01/2000 to 31/12/2011.
2. Monies now due and unpaid under each such agreement".

3. The Council responded on 27 February 2012, stating that it did not hold a list of section 106 agreements. It stated that such information was kept on individual files and in order to respond to the request it would have to effectively create new information. As such the Council stated it did not hold the information requested.
4. The complainant requested an internal review, pointing out that his request was for recorded information and did not involve the creation of new lists as the information was already contained on the individual files.
5. The Council provided the outcome of its internal review on 1 May 2012 and upheld its position that it did not hold the information in the format requested and it would therefore need to be created. The Council stated that the time taken to do this would in "in all likelihood exceed the fees limit" as provided under the FOIA.

Scope of the case

6. The complainant contacted the Commissioner on 6 May 2012 to complain about the way his request for information had been handled.
7. During the course of the Commissioner's investigation, the Council agreed that the request should have been handled under the EIR as opposed to the FOIA. The Council also acknowledged that it held information relevant to the request, although not in the form of a central list. However, the Council maintained that, in view the costs associated with complying with the request, both in terms of financial costs and distraction, it considered the request to be manifestly unreasonable, and sought to rely on regulation 12(4)(b) of the EIR.
8. The Commissioner therefore considers this complaint to relate to whether the Council was correct to treat the request as being manifestly unreasonable.

Reasons for decision

Correct Access Regime

9. The Commissioner has first considered whether the information requested by the complainant is environmental information as defined by the EIR.
10. A Section 106 agreement is a Planning Obligation authorised by section 106 of the Town and Country Planning Act 1990 (as amended). It is a

legal agreement between the Local Planning Authority and the applicant or developer, and any other parties with an interest in the land in question. These agreements are a way of delivering or addressing matters that are necessary to make a development acceptable to planning authorities. Section 106 agreements require the owner of the land to take specific actions in order to make an otherwise unacceptable development acceptable. These actions might include the construction of local facilities, designating a proportion of the proposed development as 'affordable housing', or an order to make payments which are used to improve services and infrastructure in the local community.

11. The Commissioner considers that information relating to planning and development falls within the definition of environmental information for the purposes of the regulations as provided in regulation 2(1)(c): information on "measures (including administrative measure), 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 these elements". The planning and development of land is a measure or an activity that affects or is likely to affect the elements of the environment, and in particular land and landscape.
12. The request in this case is for details of the parties with whom the Council has entered into agreements about conditions on planning applications, and details of any monies due and unpaid under each agreement. The Commissioner is satisfied that the request is for information on a measure likely to affect elements of the environment and the correct access regime is the EIR.

Regulation 12(4)(b)

13. 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.
14. 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.
15. 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 FOIA, 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.

16. The Council advised that it does not hold any form of central list or record of all the Section 106 Agreements entered into. As such, any information about such agreements would only be held within each individual planning application file. The Council confirmed that during the period covered by the request, 13,146 planning applications were submitted to the planning department. It also advised that any one of these applications could potentially be subject to a Section 106 Agreement, as such agreements are not limited to a particular type or class of development or application.
17. The Council advised that applications dating from 1 January 2000 to late 2007 which were only originally held in paper format were sent off-site in order for them to be scanned and stored electronically. However, in respect of these planning applications, all relevant planning documents are scanned and stored as one document rather than as individual documents. The Council advised that the size of the electronic document held for each planning application can vary from 40 to over 1000 pages. To identify whether any of the planning applications covering this period were subject to a Section 106 Agreement would therefore require a manual examination of the electronic document for each individual planning application. The Council confirmed that, due to the way that the planning application documents were scanned and stored there is no other way to search the contents of the records in any other way, for example using any metadata.
18. In relation to pre 2007 planning files, as it would require looking through one single document ranging from 40 to 1000 pages, the Council estimate that it would take 10 minutes for each file. This estimate is based on a sample it undertook whereby three fairly simple planning files were reviewed.
19. The Council provided the Commissioner with screen print outs from its system to demonstrate how information relating to pre 2007 planning applications is stored. Based on the evidence provided by the Council, the Commissioner accepts that to identify any Section 106 Agreements would require a manual examination of the electronic document for each planning application.
20. From 2007 onwards, information about planning applications is stored in a different format and documents relating to each application are held individually. Limited metadata is recorded in respect of each planning

document, and the Council has been able to establish that within these records there are 1139 documents relating to Section 106 Agreements. The Council provided the Commissioner with a screen dump of one planning application showing how information is stored in a sample post 2007 planning file. This showed a number of documents which could clearly be identified as relating to a Section 106 Agreement.

21. As the process of searching post 2007 planning records would be simpler than pre 2007 records, the Council estimates that it would take an average of 5 minutes to search each post 2007 record. The Council confirmed that there could be more than two parties subject to a Section 106 Agreement (ie other than the planning applicant and the Council itself). Further, whilst not all Section 106 Agreements require a party to pay any money to the Council, some Agreements require more than one party to pay monies due. Whilst the metadata distinguishes documents relating to Section 106 Agreements, it is therefore still necessary to review all the documents relating to section 106 Agreements in order to identify the parties involved.
22. The Council confirmed that there are 8,120 pre 2007 planning applications and 5,026 post 2007 applications (which contain 1139 documents relating to Section 106 agreements). In view of this, the Council's total estimate to comply with part one of the request is 1448 hours, as detailed below:

Pre 2007 records – 8,120 applications x 10 minutes = 1353 hours

Post 2007 records – 5,026 applications containing 1139 records relating to Section 106 Agreements/Correspondence x 5 minutes = 95 hours

Total Estimate = 1353 + 95 = 1448 hours.
23. The second part of the request is for details of monies due and unpaid in relation to Section 106 Agreements. The Council has again confirmed that it does not hold any central record of this information, and there is no specific account cost ledger code relating to Section 106 Agreements. As such, in order to identify this information, it would first be necessary to identify all Section 106 Agreements in the period (essentially to comply with part one of the request).
24. Once a list of all the agreements had been compiled, it would then be necessary to search through the relevant ledgers held in the Council's finance department. The Council estimates that it would take an average of 2 minutes to locate and identify the correct ledger entry and a further 2-3 minutes to retrieve the relevant paperwork. The Council has been unable to calculate an total estimate for compliance with this part of the request as it is dependent on the number of Section 106 Agreements entered into during the period (compliance with part one of the request).

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 FOIA is 18 hours. If a public authority estimates that to comply with a request made under the FOIA 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 FOIA 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 38 weeks work for one person working 7.5 hours a day to comply with part one of the request).
- Compliance with the request would clearly distract the Council 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 details of all Section 106 Agreements over an 11 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 (contained within 13,126 planning applications).The Commissioner is not aware of any reasonable alternative mechanism to identify the relevant information other than the processes detailed by the Council. However, even if the processes involved in complying with part 1 of the request were only to take an average of 1 minute it would still require 154 hours of work (around 4 weeks work for one person working 7.5 hous a day), as detailed below:

Pre 2007 records – 8,120 applications x 1 minute = 135 hours

Post 2007 records – 1139 documents x 1 minute = 19 hours

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. The Commissioner accepts that there is a strong public interest in disclosure of environmental information in general as it promotes transparency and accountability for the decisions taken by public authorities.
31. There is an inherent public interest in disclosure of information regarding planning policies and agreement in particular because such information has an impact on the day-to-day lives of individuals living in a particular area. 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.
32. Due to the strong public interest in access to information about public money, the Commissioner considers it is reasonable to have assumed that the Council has some easily accessible mechanism in place to track the receipt (or otherwise) of monies due under any ongoing Section 106 Agreements. However, based on the representations provided by the Council, the Commissioner accepts that details of monies due and unpaid under such agreements is not readily available.

Public interest arguments in favour of maintaining the exception

33. The Council considers that the public interest is served in ensuring that a resource and capacity stretched service is able to maximise its resources for the benefit of the public. The Council's position is that, as compliance with this request would incur significant costs/resources it would divert the Council from carrying out its core functions. Therefore, compliance could only be achieved at the expense of work which is also of significant importance to the delivery of other statutory services to the public.
34. 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 1448 hours' work to provide the requested information specified particularly in times when resources are stretched. This estimate

exceeds by more than 80 times the costs of the FOIA which provides similar protection to the public authority. Further, the estimate of 1448 hours only relates to part one of the request, and it would require a further 4-5 minutes for each Section 106 Agreement identified to comply with the second part of the request.

35. 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 requiring significant resources.

Right of appeal

36. 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

37. 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.
38. 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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