

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

Decision notice

Date: 27 March 2014

Public Authority: Warwick District Council
Address: Riverside House
Milverton Hill
Leamington Spa
CV32 5HZ

Decision (including any steps ordered)

1. The complainant has requested planning information relating to the West Midlands Green Belt dating from 1974. Warwick District Council (the "Council") initially argued that the information was accessible from its website or by visiting its offices. However, the information available online or in its records was not searchable such that the categories of information requested by the complainant could be readily provided. The Council argued that it would be manifestly unreasonable (regulation 12(4)(b)) on the grounds of cost for it to prepare the information in a report that matched the complainant's request.
2. The Commissioner's decision is that the Council is entitled to rely regulation 12(4)(b) as a basis for refusing the request.
3. No steps are required.

Request and response

4. On 28 August 2013 the complainant requested information of the following description:

"Please can you provide me with the following information (in summary/tabular format):
In relation to those areas of the District designated as part of the approved West Midlands Green Belt for development plan policy purposes at the time of the relevant application.

Between the dates **1 April 1974 and 31 August 2013** inclusive, split between the following four periods :

- 1/04/74 to 31/03/84
- 1/04/84 to 31/03/94
- 1/04/94 to 31/03/2004
- 1/04/2004 to 31/08/2013

For applications **excluding** changes of use and residential extensions.

1(a) Total number of planning applications made, split between residential and commercial use.

(Count as one application where outline is followed by at least one related detailed for same site)

1(b) Of 1(a), Total number of applications approved, (including on appeal), split between residential and commercial use.

(Count as one approval where outline is followed by at least one related detailed for same site)

2(a) Of 1(b), Total number of new residential dwellings approved.

2(b) Of 2(a), Total number of new residential dwellings completed

3(a) Of 1(b), Total new commercial floorspace approved (000's square metres)

3(b) Of 3(a), Total new commercial floorspace completed (000's square metres)

Please submit electronically, in Word, Excel or pdf file format".

5. On 12 September 2013 the Council responded. Without providing any further detail, it argued that the information was either available from its website or from its offices.
6. The complainant requested an internal review on 18 September 2013. On 20 September 2013, the Council sent him the outcome of its internal review. It upheld its original position. It explained that the information was reasonably accessible to the complainant although not in the format requested.

Scope of the case

7. The complainant contacted the Commissioner on 21 September 2013 to complain about the way his request for information had been handled.
8. The Commissioner concluded that the requested information was environmental information caught by the provisions of the EIR and invited the Council to provide further arguments with that in mind.
9. The Council provided the Commissioner with a link to its website where, in its view, the information could be found. It also submitted arguments

as to why it would be manifestly unreasonable on the grounds of cost to bring together the information which it publishes in order to produce the report requested in this case. Regulation 12(4)(b) of the EIR is the applicable exception. It further argued that the public interest in maintaining this exception outweighs the public interest in disclosure.

10. The Commissioner has therefore considered whether the Council is entitled to rely on section 12(4)(b) as a basis for refusing this request.

Reasons for decision

11. Regulation 2 defines what environmental information is. The first step for the Commissioner is to consider whether the information falling within the scope of the request is environmental in accordance with this definition and so whether the council correctly dealt with this request under the EIR.
12. Environmental information is defined within regulation 2(1) of the EIR as follows:

"any information in written, visual, aural, electronic or any other material form on –

(a) The state of the environment, such as air and atmosphere, water, soil, land and 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".

13. The Commissioner has considered whether the information requested by the complainant is environmental information as defined by the EIR. The Commissioner considers that the information requested falls within 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"

14. Information about a plan or a measure or an activity that affects or is likely to affect the elements of the environment is environmental information. The Commissioner therefore considers the information requested by the complainant to be environmental information because it is detailed information on the number of planning applications made in an area which had been designated as part of the approved West Midlands Green Belt for development plan policy purposes.

Regulation 5

15. Regulation 5(1) of the EIR states that:-

"...a public authority that holds environmental information should make it available on request".

16. In correspondence with the Commissioner and with the complainant, the Council initially argued that the requested information is reasonably accessible to the complainant via the following online link:

<http://planningdocuments.warwickdc.gov.uk/online-applications/>

17. The Commissioner notes that the Council did not provide the complainant with this link during the course of their exchange of correspondence.
18. In a further exchange, with the Commissioner, the Council went on to argue that it would be excessively burdensome for it to compile a report that matched the complainant's request.
19. In the Commissioner's view, the Council holds the requested information because records containing the building blocks which could be used to present the information in the categories requested. Theoretically, it would be possible to use the building blocks in order to produce the breakdown that the requester has specified.
20. The issue which arises is whether the cost or burden of providing the information would, as the Council asserted during the Commissioner's investigation, make the request manifestly unreasonable.

Regulation 12(4)(b) – manifestly unreasonable

21. Regulation 12(4)(b) of the EIR provides that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable.

22. In the Commissioner's view "manifestly" means that there must be an obvious or tangible quality to the unreasonableness.
23. Unlike FOIA and, specifically, section 12, the EIR does not contain a provision that exclusively covers the time and cost implications of compliance. The considerations associated with the application of regulation 12(4)(b) of the EIR are, instead, broader than with section 12 of FOIA. In particular, the Commissioner recognises that there may be other important factors that should be taken into account before a judgement can be made that environmental information can be withheld under the exception:
- Under the EIR, there is no statutory equivalent to the "appropriate limit" – the cost limit beyond which a public authority is not obliged to comply with a request – described at section 12 of FOIA.
 - The proportionality of the burden on the public authority's workload, taking into consideration the size of the public authority.
 - The requirement, under regulation 12(1) of the EIR, to consider the public interest test.
 - The EIR's express presumption in favour of disclosure.
 - The requirement to interpret restrictively the exceptions in the EIR.
 - The individual circumstances of the case.
24. The public authority explained the work that would be involved in pulling the information it held together to provide the report as set out in the complainant's request:
- "While the District Council has a Planning System for managing its case load it is not possible to interrogate the system to retrieve the information requested by running a report. To produce the information requested would require an officer to inspect each of the circa 1500 to 2000 applications per year to identify which applications fall within the criteria requested by [the complainant].
- A rough estimation would be that it would take 3 to 5 minutes to inspect each application. Taking the lower estimate this would mean 75 hours per year. The request covers 41 years of Warwick District Council this would be a total of 3075 hours or two years for an officer working full time."
25. The Commissioner, having taken into account the estimated time taken to comply with the request considers that, given the hours taken and resources which would be required to fulfil the request, not only is it

unreasonable to expect the Council to comply with the request, it is manifestly unreasonable on cost grounds.

26. Consequently, as is the statutory requirement under the EIR, it is left for the Commissioner to assess whether the strength of the public interest arguments in disclosure are sufficient to outweigh the concerns raised in this case about the diversion of resources.

The public interest in disclosing the information

27. The complainant made the following argument:

"I do not consider the Council has any grounds for refusal - my request is not unreasonable and relates to information that is not particularly complex, but not routinely available from the Council, from whatever sources. Moreover, it would be impractical for me to try to assemble this information myself, that is why the Council exists, to serve the public".

28. The Commissioner drew the Council's attention to a recent case considered by the First-Tier Tribunal (Information Rights) where the Tribunal found that, despite the cost burden to the public authority in that case, there was a compelling public interest in making the information in question available under the EIR. The information related to commercial planning agreements and civil engineering projects in the local community which commercial organisations were required to complete where planning permission was given (so-called "s.106 agreements"). The case in question was *Yeoman vs Information Commissioner* (EA/2013/0008) (the "Yeoman case")¹

29. The Tribunal in the Yeoman case said:

"The Tribunal felt that there was a manifest public interest in having the information sought released so that the public would know about the amount of money (or other obligations) associated with s.106 agreements (defined on page 2 of the Commissioner's DN) and the potential benefit they might have for the public. Disclosure would also allow members of the public to check when commitments under s.106 agreements were due to arise and to check whether developers were meeting their commitments and were doing the things they had agreed to do. The Tribunal considered that collating and publicising such

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http://www.informationtribunal.gov.uk/DBFiles/Decision/i1046/2013_07_15;%20Mr%20Yeoman%20Judgement.pdf

information should in fact be a core function of the public authority rather than being seen as a distraction”.

30. In the Commissioner’s view, public interest factors favouring disclosure in the Yeoman case are, to an extent, relevant here. There is a public interest in the Council presenting a clear overview of historic planning decisions made in an area of Green Belt.² The Commissioner acknowledges that the building blocks for the requested report are available on the Council’s website. However, they are difficult to compile in a manner which would assist the public in analysing historic planning decisions made in an important area of Green Belt. They cannot be interrogated readily to bring the requested information together.

The public interest in maintaining the exception

31. The Council made the following comment to the Commissioner with regard to the Yeoman case:

“While the Council acknowledges the tribunal decision the Council would ask would the public interest be best served in producing this report by spending significant amount of officer time to respond to this request, when the information can be accessed by the individual via the Council’s website in the same way an officer would be required to do to complete the response to the request.”

The balance of public interest

32. The Commissioner recognises the importance of accountability and transparency in decision-making by public authorities. He further recognises that there is an express presumption of disclosure within the EIR and that public authorities should aim to provide requested environmental information where possible and practicable.
33. The Commissioner further recognises that a public authority will always be expected to bear some costs when complying with a request. For the sake of the public interest test, however, the key issue is whether in all the circumstances this cost is disproportionate to the importance of the requested information. In the Commissioner’s view, in this case, it is.
34. The Commissioner accepts that the request has serious purpose and value and that the requested information produced in the report

² The term “green belt” is defined in the Oxford English dictionary as “An area of open land around a city, on which building is restricted”.

requested by the complainant may be of benefit to the wider public. However, he also recognises the public interest in not bringing information rights legislation into disrepute by requiring public authorities to respond to manifestly unreasonable requests. This will particularly be the case where, as here, the burden on a public authority is considerable – exceeding, for example, the appropriate limit stated in the fees regulations associated with section 12 of FOIA. This is set at 18 hours' work for a non-central government public authority such as the Council.

35. The Commissioner has decided that, despite the fact that the requested report may be of benefit to the wider public, it would be unfair to expect the Council to comply with the request because of the substantial demands it would place on the Council's resources and the likelihood that it would significantly distract officials from their key responsibilities within the organisation. Therefore, in all the circumstances, the Commissioner has found that the weight of the public interest arguments favours maintaining the exception.
36. In reaching this view, he is also taken into account the fact that the building blocks of the report requested in this case are already in the public domain.

Right of appeal

37. 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: GRC@hmcts.gsi.gov.uk

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

38. 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.
39. 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

Andrew White
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