

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 9 June 2014

Public Authority: Castle Point Borough Council
Address: Kiln Road
Thundersley
Essex
SS7 1TF

Decision (including any steps ordered)

1. The complainant requested information relating to environmental complaints from Castle Point Borough Council. The Council provided some general information, but refused to comply to the detail requested on the grounds that the request was manifestly unreasonable. The Commissioner's decision is that the request is manifestly unreasonable and the Council is not required to take any further action for this request.

Background

2. The complainant submitted a nuisance complaint to the Council under the provisions of the Environmental Protection Act 1990. The complainant was dissatisfied with the outcome of this complaint and so sought to gain further information about nuisance complaints. To this end, he submitted a request for information about complaints made from 2009 to 2012.
3. The Council provided a list of all the complaints it had received in the specified time frame, but refused the remainder of the request under regulation 12(4)(b) of the EIR (manifestly unreasonable requests) as to comply with the request would be an unwarranted burden on the Council's resources. The Council advised the complainant to submit a new request with a much reduced scope if he wished to obtain information relating to nuisance complaints.

Request and response

4. On 28 August 2013, the complainant wrote to the Council and made a new request for information in the following terms:

"1. Fullest information on all complaints identified under POL AIR QUALITY, ODOUR, PUB H, FILTHY/VERMIN, and POL SMOKE BONFIRE complaint type in the list you have sent us.

2. Just the outcome of the complaints for the remaining complaint types in the list. That is to say whether the Council acted to rectify the complaint or rejected it."
5. The Council issued its refusal notice on 26 September 2013. It provided the total number of complaints for those that came within each part of the request. However, it stated that to provide the detail requested by the complainant would take approximately 233 hours of work and so the request was refused as manifestly unreasonable.
6. The complainant requested an internal review. This was issued on 29 October 2013, and it upheld the Council's original decision.

Scope of the case

7. The complainant contacted the Commissioner on 11 January 2014 to complain about the way his request for information had been handled.
8. The Commissioner considers the scope of the request to be whether the complainant's request is manifestly unreasonable.

Reasons for decision

Is it environmental information?

9. Where the relevant information for a request meets the definition for environmental information provided in the EIR, the Commissioner must consider this complaint under the terms of the EIR and not the Freedom of Information Act 2000.
10. Regulation 2 of the EIR states that:

"2. (1) In these Regulations –

"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);"

11. The relevant information for this request relates to environmental complaints made under the Environmental Protection Act 1990, so will clearly be environmental information. The Commissioner considers the information will relate to either complaints about the state of the elements and so meet subsection (1)(a) or complaints relating to factors listed in subsection (1)(b). Therefore the Commissioner will base his decision on the EIR rather than the Freedom of Information Act 2000.

Regulation 12(4)(b) – manifestly unreasonable

12. Under regulation 12(4)(b) of the EIR, a public authority may refuse a request a request if it is manifestly unreasonable. In this instance, the Council considers the request to be manifestly unreasonable because the cost of complying with the request is too great. This approach has been confirmed by the Upper Tribunal case of *Craven v The Information Commissioner and the Department of Energy and Climate Change [2012] UKUT442 (AAC)*, which recognised that this regulation was the nearest equivalent to the costs exemption found in the Freedom of Information Act 2000.
13. However, the Commissioner notes that unlike section 12 of the Freedom of Information Act 2000, the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 do not apply. As such, there is no specific cost limit for the amount of time that can be spent complying with a request, and there is no set list of activities that can be ascribed to an estimate. Instead the determination for whether a request is manifestly unreasonable must be determined by the public authority based on the particular circumstances of the case. This means that there is no clear cut limit of the amount of time that would make a request manifestly unreasonable, but it also means the public authority can take a much wider view of the work involved in complying with the request. There is also a public interest test to consider, as established under regulation 12(1)(b).

Arguments that the request is not manifestly unreasonable

14. The complainant argued that for regulation 12(4)(b) to apply it must be evident that the request is not only unreasonable but manifestly so. The Commissioner agrees with this and acknowledges that it must be beyond doubt that the request is unreasonable.
15. The complainant also argued that the Council's position sets a dangerous precedent as it would allow public authorities to refuse requests due to the volume of work involving in complying with the request. However, the Commissioner disagrees with the complainant on this point as the precedent has already been well-established and is explained in detail in the Commissioner's guidance.¹

Arguments that the request is manifestly unreasonable

16. The Council set out detailed arguments in its submissions explaining why both parts of the request would involve a large amount of work. In reference to item 1 of the request, the Council highlighted that it would need to provide "fullest information" and that this would require careful physical examination of its manual files. For the second item of the complainant's request, the Council explained that it did not store outcomes of cases electronically, so it would again be required to conduct a search of its manual records. Physical examination of manual records is much more demanding than searching through information recorded electronically and so this would make the task of collating the required information more demanding of Council employees' time and thus cost more.
17. In its submissions the Council stated that the list sent to the complainant in response to his previous request contained details about complaints from the years 2009 – 2012. In this period the Council had received 1398 complaints, and due to the checks required of its manual records it was estimated that it would take 10 minutes per file to obtain the relevant information. This amounts to 233 hours of work, a figure that the Commissioner considers to be well in excess of the amount of time a public authority is required to spend complying with a request.
18. The Council also stated that there could be a number of exceptions that apply to the information. It would be required to check for personal data

1

http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/manifestly-unreasonable-requests.ashx#page=5

and extract it where required, and given the fact that the information relates to complaints made in confidence the Commissioner considers that this would likely be required of every complaint within the scope of the request. Further, there were instances where complaints contained details of legal action being taken by the Environmental Health Department, such as an Enforcement Notice. The Council explained it would need to check whether disclosure would have an adverse effect on the work being carried out by the Environmental Health Department, and thus be exempt under regulation 12(5)(b) (adverse effect on the course of justice etc.).

19. The Commissioner considers that the Council would be required to check the relevant material to see where either of these exceptions applied, and notes that this would require further work from the Council. Whilst the Council did not give a figure for how long this would take to conduct, the Commissioner's view is that the number of complaints that come within the scope of the request would make this a onerous task that would require a substantial amount of time. The Council argued that the time needed to respond to this request would clearly be a burden upon its resources, and take staff away from carrying out other functions.
20. The Commissioner's view is that this is correct, and due to the substantial amount of staff time required to comply with this request he considers that it is manifestly unreasonable. The Commissioner also notes that the use of the term "fullest information" means the request is not particularly clear in terms of describing the information the complainant is seeking in relation to each case file. However, it is clear that he is seeking information which would require the Council to undertake some analysis of each complaint file. The large number of files covered by the request means this would involve a considerable amount of work.
21. Whilst the Commissioner notes that the majority of the estimate comes from the Council's 10 minutes per case estimate, he notes that even at a much reduced figure of 5 minutes per case the request would still take well over 100 hours to comply with. This is too great a burden for a local Council to be required to commit to a single request, and the Commissioner's decision is that it is not only unreasonable to expect the Council to comply with the request but manifestly so.
22. As the Commissioner's decision is that the request is manifestly unreasonable, he has gone on to consider the public interest test.

Public Interest Test

Public interest in disclosing the information

23. The complainant's request came about after concerns he raised under the Environmental Protection Act 1990. He is interested in understanding the circumstances surrounding complaints to determine the reasoning behind the Council's decisions and learning why it chose not to take enforcement action when handling his complaint. The Commissioner notes that there is an argument for transparency and accountability in the decision making of public authorities, and considers that this carries weight in this case.

Public interest in maintaining the exception

24. Whilst the Commissioner does recognise the need for transparency and accountability in public authority decision making, he is of the view that this should be kept in proportion as it is not in the public interest for public funds and resources to be spent on requests that are manifestly unreasonable. He does not consider it necessary for the Council to provide details - and in some cases a substantial amount of detail - about 1,398 cases in order to meet the need for transparency and accountability when it is clear that to do so would be a substantial burden upon the Council.

Balance of public interest

25. The Commissioner's decision is that the public interest test favours maintaining the exception. Therefore the Council is entitled to refuse the request.

Regulation 9 – advice and assistance

26. Under regulation 9 public authorities have an obligation to provide advice and assistance to a requester. In instances such as this where a request has been refused because to comply with it would be an unwarranted burden, the Commissioner's view is that the public authority should consider if it can reasonably recommend ways to reduce the scope of the request in order to help the requester obtain information that is of interest to them.
27. In relation to the complainant's requests on this topic, the Council explained that it had informed the complainant that he may wish to limit the scope of his request by either reducing the timescale or the amount of information he was interested in. Given the sheer size of information held, it would seem that reducing the timescale alone would not be sufficient to make it reasonable to comply with the request. However, the Commissioner is satisfied that the Council has suggested sensible methods for reducing the scope of the request and has provided reasonable advice and assistance to the complainant.

28. The Commissioner also notes that the Council drew attention to the way the complainant could make a service level complaint relating to the concerns he raised under the Environmental Protection Act 1990. This is seen as a way of assisting the complainant with ways to raise his objections about the handling of his environmental complaint to the Council.

Right of appeal

29. 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: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

30. 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.
31. 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

Alexander Ganotis
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