

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

**Date:** 13 February 2014

**Public Authority:** City of Bradford Metropolitan District Council  
**Address:** City Hall  
Centenary Square  
Bradford  
BD1 1HY

**Decision (including any steps ordered)**

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1. The complainant has requested information relating to each land and building sale made by Bradford Metropolitan District Council ('the council') since the year 2000 with a value of £50,000 or over. The Commissioner's decision is that the council has not provided sufficient reasons for applying the exception for manifestly unreasonable requests at regulation 12(4)(b). The Commissioner has also found that the council has breached regulation 9(1) by not providing appropriate advice and assistance.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Issue a fresh response under the EIR without relying on regulation 12(4)(b).
  - Provide the complainant with appropriate advice and assistance with regard to the requested information that can be provided, to enable him to make an appropriate refined request if necessary.
3. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## **Request and response**

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4. On 2 July 2013, the complainant wrote to the council and requested information in the following terms:  
  
"I'd like to know the details of each land and building sale made by the Council since the year 2000 with a value of £50,000 or over, including the area of land and type of building, and to whom they were sold.
5. The council responded on 31 July 2013 and provided a spreadsheet detailing the completion date and the property names, streets and postcodes for some of the sales. It also stated that it did not hold some of the information requested, that being the site areas, and that details of the purchasers could not be provided under the Data Protection Act but this information could be obtained from the Land Registry.
6. The complainant requested an internal review on 31 July 2013. The council provided its response on 12 September 2013. It stated that a lot of old files and other historic records had been disposed of to reduce storage space, that legally it is only required to retain sale files for seven years after a sale but only brief details of these sales are recorded on its database, and that it does not record site areas or purchaser names. The council advised the complainant to go to the Land Registry as much of the information, specifically ownership history and price paid, would be available from that source.

## **Scope of the case**

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7. The complainant initially contacted the Commissioner on 17 September 2013 to complain about the way his request for information had been handled. Upon receiving the council's further response of 22 January 2014, the complainant confirmed that he remained unhappy with the response as no information in relation to the financial value of the sales had been provided and only limited information in relation to the land area for each sale had been provided.
8. The Commissioner wrote to the council on 20 December 2013 providing his opinion that the information requested is environmental information falling within the scope of the EIR by virtue of Regulation 2(1)(c) because the sale of land and buildings is likely to constitute a measure affecting the state of the elements of the environment, such as land and landscape. He requested that the council review the case and consider disclosing the requested information. He informed the council that if it is not prepared to disclose the withheld information it must

specify which exceptions of the EIR it is relying on to withhold the information and submit a full rationale as to why the exception applies along with arguments considered in favour of disclosure and in favour of maintaining the relevant exception under the EIR. The Commissioner also stated that if the council wished to apply the nearest equivalent exceptions to the exemptions it appears to be relying on under the FOIA (i.e s40(2) for personal data, s21 for information reasonably accessible to the applicant by other means, and s1 for information not held) then it should answer detailed questions which he posed in relation to Regulation 13 (personal data), Regulation 5(1) (information not held) and Regulation 6(1)(b) (form and format of information).

9. The council reviewed its response and on 22 January 2014 it informed the Commissioner that it would no longer be relying for the exemption for personal data in respect of purchaser names as it does not consider that the provision of such details would cause an individual damage or distress. The council provided an updated spreadsheet to the complainant which included the purchaser names. As this part of the request has now been complied with, and the reliance on the exemption for personal data retracted, the Commissioner has not considered the application of the personal data provision as part of this decision notice.
10. In its further response to the complainant and its response to the Commissioner's enquiries, both dated 22 January 2014, the council explained that in addition to adding purchaser information, information relating to use and area have been added to the spreadsheet where it has been possible to obtain this information from the corporate database. It said that although information relating to area maybe held on paper files these records have not been checked because it considers that the request is manifestly unreasonable under Regulation 12(4)(b) in that the volume of information is too burdensome to deal with.
11. The Commissioner has, therefore, gone on to consider the council's application of Regulation 12(4)(b).

## **Reasons for decision**

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### **Regulation 12(4)(b)**

12. 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.

13. The Council cited this exception on the grounds that dealing with the request would create unreasonable costs or diversion of resources and staff time would exceed 18 hours.
14. The EIR differ from the FOIA in that no specific limit is set on the amount of work required by an authority to respond to a request as provided by section 12 of the FOIA. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('fees regulations') which apply in relation to section 12 of the FOIA are not directly relevant to the EIR - the cost limit and hourly rate set by the fees regulations do not apply in relation to environmental information. However, the Commissioner accepts that the fees regulations provide a useful starting point where the reason for citing regulation 12(4)(b) is the time and cost of a request but they are not a determining factor in assessing whether the exception applies.
15. The Commissioner is satisfied that Regulation 12(4)(b) sets a fairly robust test for an authority to pass before it is no longer under a duty to respond. The test set by the EIR is that the request is 'manifestly' unreasonable, rather than simply being 'unreasonable' per se. The Commissioner considers that the term 'manifestly' means that there must be an obvious or clear quality to the identified unreasonableness.
16. It should also be noted that public authorities may be required to accept a greater burden in providing environmental information than other information. This was confirmed by the Information Tribunal in the DBERR case<sup>1</sup> where the tribunal considered the relevance of regulation 7(1) and commented as follows (paragraph 39):

"We surmise from this that Parliament intended to treat environmental information differently and to require its disclosure in circumstances where information may not have to be disclosed under FOIA. This is evident also in the fact that the EIR contains an express presumption in favour of disclosure, which FOIA does not. It may be that the public policy imperative underpinning the EIR is regarded as justifying a greater deployment of resources. We note that recital 9 of the Directive calls for disclosure of environmental information to be "to the widest extent possible". Whatever the reasons may be, the effect is that

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<sup>1</sup> Department for Business Enterprise and Regulatory reform v The Information Commissioner and Platform. Appeal no. EA/2008/0097

public authorities may be required to accept a greater burden in providing environmental information than other information.”

17. Therefore, in assessing whether the cost or burden of dealing with a request is clearly or obviously unreasonable, the Commissioner will take the following factors into account:
  - Proportionality of the burden on the public authority’s workload, taking into consideration the size of the public authority and the resources available to it, including the extent to which the public authority would be distracted from delivering other services.
  - The nature of the request and any wider value in the requested information being made publicly available.
  - The importance of any underlying issue to which the request relates, and the extent to which responding to the request would illuminate that issue.
  - The context in which the request is made, which may include the burden of responding to other requests on the same subject from the same requester.
  - The presumption in favour of disclosure under regulation 12(2);
  - The requirement to interpret the exceptions restrictively.
18. The council explained that it retains disposal files for 13 years and that further information may be retained on files within Estate Management and Legal Services. It said that since 2000 the council has disposed of 208 properties at values exceeding £50,000 and to retrieve file information relating to each sale would involve disproportionate effort. It said that the Operational Estate Management Team is as small, busy section which does not have capacity to make staff available to retrieve data relating to 208 sales from remotely stored archived files without having a significant impact on its core operations, specifically its operational estate management function. It said that, taking into account the time span and the remote storage of records, staff time involved in retrieving the information for the number of records and number of files (cases can be conducted over several continuation files) would exceed 18 hours and would create unreasonable costs or diversion of resources.
19. The Commissioner considers that he is unable to establish the proportionality of the burden on the council’s workload as it has not

provided any detail as to what that burden would be, except to say that the time would exceed 18 hours.

20. As stated above, although the fees regulations are not directly applicable to the EIR, in the ICO's view they can provide a useful point of reference when public authorities argue that complying with a request would incur an unreasonable cost and therefore could be refused on the basis of regulation 12(4)(b). The Commissioner expects that a public authority should provide a detailed estimate of the time/cost taken to provide the information falling within the scope of a request and that such an estimate should be sensible and reasonable and based upon the quickest method of gathering the requested information.
21. In this case, the Commissioner notes that information relating to the area of land sold has been provided from its electronic records for 28 sales. It therefore follows that the council wouldn't need to search all 208 sales records but would need to search 180. In order to justify its position the Commissioner would expect the council to provide a calculation as to how long it would take to search these files, for example, 180 files at 5 minutes each would amount to 15 hours.
22. The council has not provided any detail as to the context or value of the request or the extent to which the public authority would be distracted from delivering other services.
23. The Commissioner considers that the council has been provided with sufficient opportunity to provide its rationale for withholding the requested information. The rationale should have been in place since the request was refused and therefore opportunities for providing this existed at the original refusal, at the internal review and when requested by the Commissioner.
24. The council was informed by the Commissioner that it must justify its position and was provided with the Commissioner's guidance on how he deals with complaints<sup>2</sup> which clearly states that it is the public authorities' responsibility to satisfy the Commissioner that information should not be disclosed and that it has complied with the law.

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<sup>2</sup> [http://www.ico.org.uk/for\\_organisations/freedom\\_of\\_information/guide.aspx](http://www.ico.org.uk/for_organisations/freedom_of_information/guide.aspx)

25. As the council did not provide sufficient arguments for the application of the exception, the Commissioner has no choice but to conclude that it is not engaged.
26. In addition, the Commissioner notes that the council did not provide any arguments in relation to the public interest test which would need to be considered if the exception was engaged. He also notes that the complainant has said the request was triggered by reports from other councils where assets appear to have been sold at well below market value. The complainant acknowledged that all councils are under pressure to balance cutbacks by sales but said that the scale is unprecedented in what he describes as the biggest privatisation of publically owned, local assets in history, with hardly any public scrutiny.

### **Regulation 9(1) – advice and assistance**

27. Regulation 9(1) of the EIR states:

“A public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.”

28. This regulation places a duty on a public authority to provide advice and assistance to someone making a request and the Commissioner believes that this includes assisting an applicant to refine a request if it is deemed that answering a request would incur an unreasonable cost.
29. The Commissioner notes that no advice and assistance was given by the council in relation to refining the request. He is mindful of the fact that the council’s obligation under regulation 9(1) only extends to what is reasonable. His view is that it would have been reasonable for the council to suggest that the time period the request covers could be reduced or that the outstanding elements of the request could be limited to the financial value of the sales (see the paragraph below) rather than the financial value and the area of land. The Commissioner therefore finds the council has failed to comply with regulation 9(1) of the EIR.

### **Financial value of each sale**

30. The Commissioner notes that the council’s response to his enquiries did not specifically mention the element of the request relating to value of each sale over £50,000. The value of each sale was mentioned in the original request and specifically requested as part of the request for an internal review. The council did explain that it interrogated the

corporate property database for information relating to disposals over £50,000 since 2000 and therefore it appears logical that in order to carry out such a search, information relating to the value of each sale would be recorded on the database. As the council has not provided any rationale for not providing this information, and has not specifically withheld it under Regulation 12(4)(b), the Commissioner requires that the fresh response ordered at paragraph 2 references the financial value of each sale.

## **Other matters**

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31. The Commissioner notes that the council did not initially identify the requested information as environmental and therefore deal with the request under the EIR. The council should ensure that it is aware of the requirements of the EIR and of the necessity for a request for environmental information to be handled under the EIR.
32. The Commissioner also notes that the council did not specifically cite any exceptions or exemptions in its initial response or internal review and then retracted its reliance on data protection provisions during the Commissioner's investigation. It also stated in its internal review that it does not record site areas or purchaser names but then provided some of this information during the Commissioner's investigation. This could be an indication that the council did not apply a presumption of disclosure when considering the request and did not give the request proper or full consideration until a complaint was made to the Commissioner.



## Right of appeal

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33. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

34. 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.
35. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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