

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 27 January 2016

Public Authority: Bristol City Council

Address: City Hall
College Green
Bristol
BS1 5TR

Decision (including any steps ordered)

1. The complainant has requested recorded information which concerns planning applications associated with a specific address in Bristol. Bristol City Council refused to respond to the complainants' requests in reliance on Regulation 12(4)(b) of the EIR, on the grounds that they were manifestly unreasonable.
2. The Commissioner's decision is that the Council correctly applied Regulation 12(4)(b). Consequently, the Commissioner does not require the Council to take any further action in this matter.
3. The Commissioner has also decided that the Council breached Regulation 5(2) by failing to respond to the complainants' requests within the twenty day compliance period.

Request and response

4. On 12 April 2015, the complainants wrote to Bristol City Council asking for copies of the minutes of the pre-Committee meeting held on 30 July 2014.
5. The complainants' request was acknowledged by the Council also on 12 April.
6. Also on 12 April 2015, the complainants asked the Council for the following information:

'Information /copies of any request for legal advice from BCC officers regarding the validity of planning application 13/05241/F with dates of request.

Information/copies of any request for legal advice from BCC officers regarding the validity of planning consent 11/04444/F, with dates of request.

Information copies of any other legal advice sought from BCC officers regarding any other planning matter relating to 9 Minto Road, with dates of request.

Information/copies of any legal advice provided to BCC officers regarding planning matters at 9 Minton Road, with dates of advice. This should include any advice provided, including dates of advice provided.'

7. On 1 July 2015, the Council issued a refusal notice to the complainants in respect of their requests. The Council advised the complainants that it was applying Regulation 12(4)(b) of the EIR to their requests which it had not already responded to. The Council's email set out its reasons for the application of Regulation 12(4)(b) and referred the complainants to their previous requests for information which had been dealt with under references JG14-1735, 1736, 2071, 2079, 2084, 2088, JG15-2756, 2851, 2852, 2889, 2890, 2894, 2895, 2963, and 2987.
8. On 2 July the complainants made their response to the Council's refusal notice. They disputed the Council's decision that their requests are vexatious or manifestly unreasonable and asserted that the Council has no grounds for withholding the information which they seek. The complainants complained about the failure of the Council to respond to their requests for legal opinion and for details of the pre-Committee meeting of 30 July 2014 until 1 July.
9. On receipt of the complainants' email of 2 July, the Council immediately responded to the complainants, informing them that, having spoken to BCC's planning lawyers, the Council can confirm 'that neither have given advice on Minto Road' and, 'the only advice was given verbally in relation to a constitution issue' which the complainants had raised in March. Consequently the Council advised the complainants that it does not hold the requested information.
10. The Council's email of 2 July was also immediately responded to by the complainants. They asserted that the Council's response contradicted the Committee papers of September 2014, which state that legal advice was sought on ownership certificate matters in respect of planning application 13/05241/F. The complainants also asserted that the Council

has been acting outside of due legal process in respect of 9 Minto Road, knowing that consent in respect of 11/04444/F was invalid and that 13/05241/F had been 'smuggled' through Committee.

11. On 6 July, the Council wrote to the complainants in respect of a complaint they had made to the Mayor of Bristol. The Council's email accepted that the complainants should have received a refusal notice on 5 June in respect of their requests concerning 9 Minto Road. The Council apologised for what appeared to be an administrative error and advised the complainants that it was not prepared to enter into any further correspondence with them in respect of 9 Minto Road. The Council also pointed out that it was under no obligation to provide the complainants with information concerning legal advice, having already refused that request in reliance on Regulation 12(4)(b). The Council pointed out that it 'chose' to comment on that particular aspect of their request, purely as a courtesy.

Scope of the case

12. The complainants contacted the Commissioner 19 August 2015 complain about the way their requests for information had been handled.
13. The complainants expressed their concern that their requests for details of a pre-committee meeting of 12 July 2014 and for legal advice provided to planning officers were ignored by the Council. The complainants also disputed the Council's application of Regulation 12(4)(b) of the EIR.
14. The Commissioner considers that the Council's application of Regulation 12(4)(b) was made in respect of the complainants' request for the details of the pre-committee meeting and their request for the legal advice given to planning officers. He has noted that the Council confirmed that it 'chose' to comment about the request for legal advice only as a courtesy and irrespective of its application of 12(4)(b).
15. The focus of the Commissioner's investigation was the Council's application of Regulation 12(4)(b) to the two requests made by the complainants on 12 April 2015. This notice sets out the Commissioner's decision.

Reasons for decision

Regulation 12(4)(b) – where the request is manifestly unreasonable

18. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose environmental information to the extent that the request for information is manifestly unreasonable.
19. There is no definition of 'manifestly unreasonable' under the EIR. The Commissioner considers that 'manifestly' implies that the request should 'obviously' or 'clearly' be unreasonable.
20. A request can be manifestly unreasonable for two reasons: Firstly if it is vexatious and secondly where the public authority would incur unreasonable costs or where there would be an unreasonable diversion of resources.
21. There is no definition of the term "vexatious" in the Freedom of Information Act, however the issue of vexatious requests has been considered by the Upper Tribunal in the case of *The Information Commissioner and Devon County Council v Mr Alan Dransfield (GIA/3037/2011)*. In the Dransfield case the Tribunal concluded that the term could be defined as "manifestly unjustified, inappropriate or improper use of formal procedure." The Tribunal identified four factors likely to be relevant in vexatious requests:
 - The burden imposed by the request on the public authority and its staff
 - The motive of the requestor
 - Harassment or distress caused to staff
 - The value or serious purpose of the request.
22. The Upper Tribunal's decision established the concepts of "proportionality" and "justification" as being central to any consideration of whether a request for information is vexatious.
23. The key to determining whether a request is vexatious is a consideration of whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear it is necessary to weigh the impact of the request on the public authority against the purpose and value of the request. To do this a public authority must be permitted to take into account wider factors associated with the request, such as its background and history.

24. In this case the Council asserts that the primary purpose of the complainants' requests is to sustain a dialogue with the Council about its policy, procedure and service delivery in a matter which concerns planning and enforcement matters.
25. The Council assert that the complainants will never be satisfied with the decisions it made concerning 9 Minto Road, irrespective of the number of requests they continue to submit: The point has now been reached where the complainants' request now only serve to harass the Council's Planning Department.
26. The Council points to the number and frequency of the requests made by the complainants in respect of 9 Minto Road and to the disproportionate amount of time its staff spends in dealing with them. It points out that the complainants have made 22 requests for information over a period of eight months all of which concern 9 Minto Road.
27. The Council consider that the level at which the complainants have submitted their requests is unreasonable and there have been occasions when they have submitted new requests before the Council has had the opportunity to deal with their previous ones.
28. The time required to deal with the requests has led to an unjustified level of disruption to the Council's service and the requests have placed a significant burden on its officers. The Council considers that a point has been reached where its officers require respite from dealing with the complainants' requests in order to continue with more pressing service duties. One officer in particular has reported feeling burdened and stressed over the complainants' requests and complaints, particularly where his professionalism has been called into question.
29. The Council considers that the burden the complainants' requests have placed on its officers is real and unjustified. It asserts that the requests do not serve the wider public interest, pointing to the fact that only a small number of people are affected by the development at 9 Minton Road. Likewise. The complainants' requests have been submitted at the same time when the complainants submitted a complaint to the Local Government Ombudsman. The Ombudsman's scrutiny of this complaint, and her final decision, indicates that the no real purpose would be served by the Council continuing to respond to the complainants' requests: To do so would not advance the complainants' cause in respect of 9 Minto Road nor would it be justified given the small public interest associated with it.
30. The Council considers that sending a high volume of requests is not the appropriate mechanism of appeal. All of the complainants' requests are focussed on 9 Minto Road and given their focus and frequency, the

Council asserts that the requests are being used by the complainants to use the provisions of the EIR to circumvent the planning process.

31. The complainants have indicated to the Council that their objective in making their requests is to ascertain whether the Council has followed due process. The Council considers that this objective cannot justify the level of requests the complainants have submitted. It points out that the complainants have submitted their numerous concerns to the Local Government Ombudsman, who found that there was no reasonable suspicion of wrong-doing on the part of the Council and that there was no evidence found to show that the officer who dealt with 9 Minto Road showed any bias.
32. The Council's application of Regulation 12(4)(b) is founded on a combination of the assertions outlined above. The Council considers that the cost of continuing to deal with the complainants' requests is, and would continue to be, a drain on the public purse where the purpose of their requests would only serve their own personal interests, given the limited wider public interest.
33. The Commissioner has considered the Council's representations in respect of its application of Regulation 12(4)(b) and also the correspondence it provided in support of its position. He has noted the number, frequency and focus of the complainants' requests and also the decision made by the Ombudsman in her consideration of their complaint. He has also noted the occasions when the Council itself has considered complaints made by the complainants in respect of the development at 9 Minto Road.
34. The Commissioner agrees with the Council that the complainants' requests have passed the point where they have become burdensome to the Council and he too finds that their requests represent a disproportionate use of the Council's resources.
35. It is apparent to the Commissioner that the Council is likely to be correct in its belief that the complainants are trying to sustain a dialogue with the Council in a matter which has not been concluded to their satisfaction.
36. The Commissioner does not agree with the Council that the complainants are using the provisions of the EIR to circumvent the appropriate appeal process. However, he does agree with the Council that continuing to deal with their requests for information in respect of 9 Minto Road would only serve a narrow public interest.
37. For this reason, the Commissioner considers that the complainants requests have now passed the point where it has become plainly

unreasonable for the Council to continue to respond to them and consequently he is drawn to conclude that regulation 12(4)(b) is engaged in respect of the requests of 12 April 2015.

The public interest test

38. The Commissioner has gone on to consider whether the balance of the public interest in maintaining the exception outweighs the public interest in responding to the complainants' requests of 12 April 2015.
39. The Commissioner will always give weight to factors which favour the disclosure of information which would increase the public's understanding of the actions taken by the Council and of the processes by which it makes its decisions. Such disclosure of information increases transparency and provides accountability of public authorities.
40. In this case the Commissioner is satisfied that the planning and enforcement issues associated with 9 Minto Road have been extensively considered by both the Council and by the Local Government Ombudsman. Furthermore, The Commissioner agrees with the Council that the public interest can also be served by an appeal being made via the appropriate process.
41. The Commissioner must be mindful of the Ombudsman's conclusion that no reasonable suspicion of wrong-doing on the Council's part or bias shown by the case officer involved.
42. In the Commissioner's opinion the Council appears to have endeavoured to assist the complainants in their understanding of its actions by the provision of information and by its consideration of the complainant's complaints.
43. In the Commissioner's opinion there is little or no public value to be had by asking the Council to spend further time or expense in responding to the complainants' requests. He agrees with the Council that responding to further requests concerning 9 Minto Road is unlikely to satisfy their on-going scrutiny of the Council's actions.
44. The Commissioner considers agrees with the Council's assessment of the narrow public interest associated with the planning and enforcement issues relating to 9 Minto Road. He must be mindful of the disproportionate effects of the complainants' requests on the Council's resources, particularly at a time when resources are particularly stretched.
45. Having considered the cumulative weight of the above factors, the Commissioner finds that the public interest lies in favour of the Council's

position: The Commissioner has therefore decided that the Council has properly applied Regulation 12(4)(b).

46. The Commissioner has also decided that the Council breached Regulation 5(2) of the EIR by failing to respond to the complainants' request within the twenty working day compliance period which that Regulation requires.

Right of appeal

47. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

48. 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.
49. 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
Wilmslow
Cheshire
SK9 5AF