

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

**Decision notice**

**Date:** 23 March 2017

**Public Authority:** Derbyshire County Council  
**Address:** County Hall  
Matlock  
Derbyshire  
DE4 3AG

**Decision (including any steps ordered)**

---

1. The complainant has requested information and correspondence relating to flooding in or around Lower Hartshay, guidelines to be considered when determining whether to exercise Section 25 (Land Drainage Act 1991) enforcement powers, and details of all flood incidents where Derbyshire County Council has exercised its discretionary enforcement powers. The Commissioner's decision is that Derbyshire County Council has complied with regulation 9(1) of the EIR in relation to providing advice and assistance, and has provided responses as soon as possible in accordance with regulations 5(2) and 14(2) of the EIR. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

**Request and response**

---

2. On 12 July 2016, the complainant wrote to Derbyshire County Council ('the council') and requested information in the following terms:

"All information held by DCC relating to floods in or around Lower Hartshay during the past ten years.

Copies of all correspondence (including letters, emails, telephone conversations, meeting minutes, etc.) between officials, elected members and any individuals or bodies affected by any such flooding in or around Lower Hartshay during the past ten years.

Full details of the relevant DCC guidelines to be considered when determining whether to exercise Section 25 (Land Drainage Act 1991) enforcement powers.

Full details of all flood incidents during the past ten years where DCC has exercised its discretionary enforcement powers, including the grounds for choosing to exercise its powers."

3. The council responded on 2 August 2016. It said that the request would have to be refused under the exception for manifestly unreasonable requests at regulation 12(4)(b) of the EIR and asked the complainant to narrow his request asking him to consider certain specified issues.

4. On 5 August 2016 the complainant then made the following request for information:

"All information held by DCC relating to floods in or around Lower Hartshay since **1<sup>st</sup> November 2012**.

Copies of all correspondence to/from any officers in the **Flood Risk Management Team**, elected members and any individuals or bodies affected by any such flooding in or around Lower Hartshay since **1<sup>st</sup> November 2012**.

Full details of the relevant DCC guidelines to be considered when determining whether to exercise Section 25 (Land Drainage Act 1991) enforcement powers.

Full details of all flood incidents during the past **FIVE** years where DCC has exercised its discretionary enforcement powers, including the grounds for choosing to exercise its powers."

5. The council responded on 16 August 2016. It provided information in relation to the last two parts of the request but applied the exception for manifestly unreasonable requests at regulation 12(4)(b) of the EIR to the first two parts of the request and said that the exception for requests formulated in too general a manner at regulation 12(4)(c) also applies to the second part of the request. It said that the attempt to narrow the request has not actually limited the request at all.

6. On 16 August 2016 the complainant then made the following request for information:

"All information held by DCC relating to floods in or around Lower Hartshay between 1st November 2012 and 31st December 2013.

Copies of all correspondence (including letters, emails, telephone conversations, meeting minutes, etc.) to or from any officers in the

Flood Risk Management Team and any bodies affected by any such flooding in or around Lower Hartshay between 1st November 2012 and 31st December 2013.”

7. The council wrote to the complainant on 22 August 2016 and suggested that the request be refined to ‘All information held by the Economy, Transport and Communities Department...’ rather than ‘All information held by DCC...’. The complainant responded on the same day asking the council to proceed with the limited scope as suggested.
8. On 30 August 2016 the council provided a review of the request made on the 16 August 2016. It quoted the request made on 5 August 2016 (rather than that made on 16 August 2016 and clarified on 22 August 2016) and maintained its reliance on regulation 12(4)(b) but said that the exception at regulation 12(4)(c) was not engaged.

### **Scope of the case**

---

9. The complainant contacted the Commissioner on 1 September 2016 to complain about the way his request for information had been handled. He said that the council has consistently withheld the requested information, done the bare minimum to assist him in gaining access to the information, and has responded at the eleventh hour on each occasion.
10. The Commissioner made enquiries of the council as to its application of the exception for manifestly unreasonable requests at regulation 12(4)(b) of the EIR and its provision of advice and assistance in accordance with regulation 9 of the EIR.
11. The council then telephoned the Commissioner to inform her that the request dated 16th August 2016, and refined on 22 August 2016, was responded to on 13 September 2016 and information provided (with redactions for personal data). A copy of that response was subsequently sent to the Commissioner.
12. On 27 February 2017, the Commissioner spoke to the complainant. He said that he is satisfied with the actual information that has been provided and confirmed that his complaint is in relation to the timeliness of the council’s responses and the provision of advice and assistance.
13. The Commissioner has therefore considered whether the council has breached regulations 5(2), 9(1) and 14(2) of the EIR.

## Reasons for decision

---

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

14. 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.”

15. 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.

16. Regulation 9(3) states that if a public authority has complied with the advice and assistance requirements as detailed within the EIR procedural code of practice<sup>1</sup>, the authority will have complied with the EIR in respect of this obligation.

17. The Commissioner considers that paragraphs 9-11 and 20 of the code of practice are relevant in this case:

“9. Every public authority should be ready to provide advice and assistance, including but not necessarily limited to the steps set out below. This advice and assistance should be available to those who propose to make, or have made requests and help them to make good use of the Regulations. The duty on the public authority is to provide advice and assistance “so far as it would be reasonable to expect the authority to do so”.

10. Appropriate assistance might include:

- providing an outline of the different kinds of information that might meet the terms of the request;

- providing access to detailed catalogues and indexes, where these are available, to help the applicant ascertain the nature and extent of the information held by the authority; and

---

<sup>1</sup> [https://ico.org.uk/media/for-organisations/documents/1644/environmental\\_information\\_regulations\\_code\\_of\\_practice.pdf](https://ico.org.uk/media/for-organisations/documents/1644/environmental_information_regulations_code_of_practice.pdf)

- providing a general response to the request setting out options for further information that could be provided on request.

- advising the person that another person or agency (such as a Citizens Advice Bureau) may be able to assist them with the application or make the application on their behalf.

11. This list is not exhaustive and public authorities should be flexible in offering advice and assistance most appropriate to the circumstances of the applicant...

...20. There is no EIR equivalent to the 'appropriate limit' under section 12 of the FOIA. A public authority is expected to deal with all requests for environmental information. However, cost may be relevant when considering whether to apply the exceptions relating to 'manifestly unreasonable' or 'too general'. Where the applicant makes a request that is clear but which involves the provision of a very large volume of information, and specifies a cost ceiling, the authority should consider providing an indication of what information could be provided within the cost ceiling."

18. In the initial request for information, dated 12 July 2016, and the requests of 5 and 16 August 2016, the complainant specifically said 'If this request is too wide or unclear, I would be grateful if you could contact me, as I understand that under the Act you are required to advise and assist requesters'.

19. The complainant has said that he thinks the council could have been more specific as to how to refine his request in the first instance. In correspondence to the council dated 31 August 2016 he said the following:

"My concern was that you rejected my first request as too wide (10 years). You did not suggest a more reasonable scope, so I chose 5 years for my revised second request. You did not state that the phrase 'all information', contained in the first request, would be problematic for you.

My second request was limited to 5 years and you rejected that as too wide-ranging. You did not suggest a more reasonable scope, so I chose 13 months for my revised third request. You did not state that the phrase 'all information', contained in the first and second requests, would be problematic for you.

My third request was limited to 13 months and you also rejected that as the phrase 'all information', contained in the first, second and third requests, is problematic for you.

My question remains, why did you not point out your problem with the phrase 'all information' until after my third request was submitted? You could have done this much earlier and saved us all so much time and effort.

It could be construed as an attempt to delay proceedings and avoid sharing information. I am sure that is not the case, but I would be grateful to understand your thinking on this."

20. The Commissioner asked the council to clarify the nature of advice and assistance given in this case, other than that given in the council's response dated 2 and 22 August 2106, and if no further advice and assistance was provided to explain why not. She also asked the council to explain why the complainant was not initially asked to refine his request to 'All information held by the Economy, Transport and Communities Department...' rather than 'All information held by DCC...' and was only asked this on 22 August 2016.
21. The council explained to the Commissioner that comprehensive advice was given to the complainant in respect of the reasons for refusal and how to narrow his request in its initial response of 2 August 2016. That advise included the following:
  - "Giving a more concise time period that is far smaller than the one given in the original request, i.e. from the 01/01/2014 to the date of my request, or last 2 years. This is because the period specified is a very substantial one and there have been several departmental changes of responsibility, which means that the task of trying to locate, then extract and collate the data would require substantial input of staff time and costs.
  - Copies of all correspondence - This part of your request would have to be refused because trying to trace where and who this data might held by would involve all areas of the council, along with all council officers, being required to check their files/emails in order to see if they held anything pertinent to this request. This again would mean that a vast and substantial input of staff time and costs would be required. So, if you can give a name i.e. an officer or councillor, or any other qualifying data that you feel might help to try to narrow the request sufficiently, we would reconsider this part of your request accordingly...
  - ...In regards to your request for data relating to DCC's discretionary

powers, again, you will need to consider limiting the time period for which you are seeking this data. You will also need to provide specific and named locations for which you are seeking this data, because this information, while it will be logged on the relevant file, is not logged or recorded separately. This is because it is not required by the council other than in relation to the site in question. The vast amount of staff time and costs involved would, again, mean that the request would have to be refused under 12(4)(b) because this is a substantial request in its own right, as it stands, that is unless you are able to provide some criteria by which we can sufficiently narrow this part of the request."

22. The council said that the complainant failed to sufficiently narrow his subsequent request as per its advice and that this was pointed out to him when he contacted the council on 10 and 11 August 2016. It also said that due to the advice and assistance given, it was able to provide the answers to parts 3 and 4 of the request in its response of 16 August 2016.
23. In relation to parts 1 and 2 of the request, the Commissioner notes that the complainant initially reduced the term to 'since 1<sup>st</sup> November 2012' from 'during the past ten years', rather than the last 2 years as suggested by the council. In relation to part 2 of the request, the Commissioner notes that the complainant initially reduced the term to 'any officers in the Flood Risk Management Team' from 'officials' rather than 'an officer or councillor' as suggested by the council.
24. The council explained that due to the advice and assistance given on 22 August 2016, i.e. that the request be refined to 'All information held by the Economy, Transport and Communities Department...' rather than 'All information held by DCC...', it was able to provide the requested information on 13 September 2016.
25. In relation to why the complainant was not initially asked to refine his request to 'All information held by the Economy, Transport and Communities Department...' and was only asked this on 22 August 2016, the council explained that the requests of 12 July 2016 and 5 August could not have been met by this narrowing down and that it was only when the complainant had taken on board the advice to narrow his request that it became feasible to answer his questions if the scope was further narrowed to the Economy, Transport and Communities Department. The Commissioner notes that it was only when the complainant reduced the term of the request to a 13 month period that the council provided advice to further reduce this to the Economy, Transport and Communities Department.



26. The Commissioner has considered the complainant's concerns, and the council's explanation of the circumstances in this case, against the terms of regulation 9 and the code of practice (as detailed above). She considers that the council's initial response of 2 August 2016 provided a general response to the request setting out options for further information that could be provided on request as per paragraph 10 of the code of practice. She also considers that the council's initial response provided an indication of what information could be provided within the cost ceiling as per paragraph 20 of the code of practice.
27. The Commissioner acknowledges that paragraphs 9 and 11 of the code of practice state that advice and assistance should not necessarily be limited to the steps set out in the code, and that public authorities must provide advice and assistance so far as it would be reasonable to expect them to do so. Given the circumstances of this case, in particular the wide ranging nature of the information sought at parts 1 and 2 of the request, the Commissioner considers that the advice and assistance given was reasonable. She appreciates the complainant's point that the council did not provide advice regarding the phrase 'all information' until after the third request was submitted but given that the timeframe of the request wasn't reduced to within the period the council advised was possible in its initial response until the third request, she considers it reasonable that the council had not further drilled down into what could be provided until this point. The Commissioner has also taken into consideration the fact that as a result of advice and assistance given, the complainant was provided with all information within the refined scope of the requests.
28. The Commissioner therefore finds the council has conformed with the code of practice and has therefore complied with regulation 9(1) the EIR.

**Regulation 5 - Duty to make available environmental information on request and Regulation 14 - Refusal to disclose information**

29. Regulation 5(1) states that a public authority that holds environmental information shall make it available on request. Regulation 5(2) states that this information shall be made available as soon as possible and no later than 20 working days after the date of receipt of request.
30. The effect of Regulations 14(1) and 14(2) of the EIR is that if a public authority is going to refuse a request for environmental information the refusal must be made in writing and shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.



31. The complainant has not disputed that the council provided information and refusals within 20 working days of the requests. Instead, he has said that responses have been sent at the eleventh hour. Therefore the Commissioner has considered whether the responses have been sent as soon as possible.
32. The Commissioner's guidance on 'Time limits for compliance'<sup>2</sup> states that whilst the duty to respond 'as soon as possible' will always be linked to the obligation to comply 'no later than 20 working days after receipt of the request', it should be treated as a separate requirement. Therefore an authority will need to both respond as soon as possible and within 20 working days. The 20 working day limit should be regarded as a 'long stop', in other words the latest possible date on which the authority can comply. An authority which complies close to, or on, the final day of the 20 working day limit ought to be able to both account for, and justify, the length of time taken to meet the obligation concerned.
33. In this case the Commissioner asked the council to provide details of why the responses in this case weren't provided any sooner and said that this could include information relating to the specific processes undertaken, the time taken for each of those processes and any circumstances which had a bearing on the time taken to prepare the specific responses to the complainant.
34. The council confirmed that the request made on 12 July 2016 was refused on 2 August 2016 which is a period of 15 working days. It explained that at the initial stage of responding to the request the emphasis was on estimating how much time it would take and the amount of data involved. It was passed to the Flood Team Senior Manager to assess and then various council officers were contacted and asked to provide an estimate of the amount of data and time that would be involved in collating the information. The council explained that once the assessment came in, a decision had to be made as to how to proceed because it was apparent that there were many difficulties involved. It said that given the amount of work and officers involved, it believes that it dealt with the request in a timely manner.
35. The council also confirmed that it responded to the clarified request made on 5 August 2016 on 16 August 2016 which is a period of 7 working days. It answered parts 3 and 4 of the request and refused

---

<sup>2</sup> <https://ico.org.uk/media/for-organisations/documents/1622/time-for-compliance-eir-guidance.pdf>

parts 1 and 2. It explained that the request was immediately re-circulated to the council officers to see if the amended request was now achievable. It informed the Commissioner that the complainant chased a response on 10 and 11 August 2016 asking whether the request was now acceptable. The complainant was told that the amended request had been circulated to officers again and that several had initially considered that it did not appear to have been sufficiently narrowed but this needed to be confirmed by their senior manager who would not be available until 15 August 2016. The senior manager, on his return on 15 August 2016, assessed the new request and confirmed that the reduction in time span had not sufficiently narrowed the request. The council said that the given the amount of work involved and the delay due to senior management involvement being required, the period of 7 days to provide a response was justified.

36. In relation the request made on 16 August 2016, the council explained that the request was circulated and a decision was made that if the request were further narrowed to all information held by the Economy Transport and Communities Department then it could be answered. It wrote to the complainant on 22 August 2016 to suggest this refinement and received confirmation the same day. The council said that this resulted in a response being provided on 30 August 2016 which is a period of 5 working days. However, as stated in paragraph 8, the Commissioner notes that on 30 August 2016 the council provided a review of the request made on the 16 August 2016 and maintained its reliance on regulation 12(4)(b). The Commissioner considers that the information was provided on 13 September 2016 which is a period of 19 working days from receiving the request on 16 August 2016 and 15 working days from receiving clarification on 22 August 2016. The council said that the clarified request was still huge and the response had to be given in several separate emails of several megabytes each. It said that in all the circumstances all the responses were sent as soon as possible.
37. The Commissioner considers that the following from the decision notice for case reference FER0348473<sup>3</sup> is relevant;

“The test of whether a public authority has complied “as soon as possible” is a subjective one, because it could be argued that if the Council set aside all of its other tasks and focuses solely on complying with the request, a response could be sent very promptly. However, the Commissioner accepts that a public authority is entitled to balance

---

<sup>3</sup> [https://ico.org.uk/media/action-weve-taken/decision-notices/2010/562646/fer\\_0348473.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2010/562646/fer_0348473.pdf)

its duties under the EIR with its other responsibilities and commitments. He also accepts that it was appropriate for the Council to delegate the task of searching relevant records to staff that have experience and knowledge of this area. He considers that the Council therefore complied with this request as quickly as possible particularly given its obligations to comply with a wide range of responsibilities." (para 32)

38. Taking all of the above into account, the Commissioner does not consider that there is any evidence that the council did not respond to the requests as promptly as possible. Consequently, she finds that the council has not breached regulations 5(2) or 14(2).

## Right of appeal

---

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

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

40. 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.
41. 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** .....

**Deborah Clark**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**