

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

**Decision notice**

**Date:** 20 November 2017

**Public Authority:** Cheshire East Council  
**Address:** Municipal Buildings  
Earle Street  
Crewe  
Cheshire  
CW1 2BJ

**Decision (including any steps ordered)**

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1. The complainant has asked Cheshire East Council for a list of all traffic schemes where a number of specified traffic orders have been approved but not yet implemented. The Council has confirmed that it holds the information which the complainant seeks but has refused to disclose this on the Grounds that the request is manifestly unreasonable.
2. The Commissioner's decision is that Cheshire East Council is entitled to rely on Regulation 12(4)(b) of the EIR to refuse to comply with the complainant's request. She accepts the Council's position that the request is manifestly unreasonable and finds that the public interest favours the Council's position.
3. The Commissioner requires the public authority to take no further action in this matter.

**Request and response**

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4. On 13 December 2016, the complainant submitted a request for information to Cheshire East Council via the WhatDoTheyKnow website. The terms of the complainant's request are:  
  
"Please provide a list from the Highways Department for all traffic schemes which have been approved but not yet implemented by the council and specifically for:

- (a) permanent stopping up or diversion
  - (b) waiting or loading restrictions
  - (c) one way driving
  - (d) prohibition of driving
  - (e) pedestrianisation
  - (f) vehicle weight or width restriction
  - (g) traffic calming works including road humps
  - (h) residents parking controls
  - (i) minor road widening or improvement
  - (j) pedestrian crossings
  - (k) cycle tracks
  - (l) bridge building"
5. The Council responded to the complainant's request on 21 December 2016 by confirming it holds the requested information and refusing to supply it in reliance on Regulation 6(1)(b) of the EIR, on the grounds that the information is already publicly available and easily accessible to the applicant in another form or format.
6. The Council also confirmed that its Property Search service department will provide responses to the above and to some of the new questions which have been introduced by the Law Society and form part of the new CON29 form.
7. The Council advised the complainant that there will be no change to the way new information is provided and it informed the complainant that all environmental information will be provided for viewing at either its Macclesfield or Crewe Customer Services centres.
8. On 30 December 2016, the complainant asked the Council to review its handling of this request. The complainant challenged the Council's application of Regulation 6(1)(b) on the grounds that it would be manifestly unreasonable to expect an enquirer to submit an individual to make a request on a "per property" basis for every road in the Council's administrative district in order to obtain a list of proposed traffic schemes. The complainant stated that, "...to obtain the information requested by the Council's suggested procedure it would require submitting literally thousands of individual requests, one for a property on every road..." and consequently the complainant asserted that the information is clearly not easily acceptable.
9. On 31 January 2017, the Council provided the complainant with the results of its internal review. The Council determined that the complainant's request should be refused in reliance on Regulation 12(4)(b) of the EIR on the grounds that it is manifestly unreasonable. The Council stated that, "The information you are requesting is not

easily accessible on lists/registers”, and, “to provide a response, the service would be required to search the records for every property within the borough of Cheshire East, so as to ensure that the information you seek is valid and completely up-to-date...” The Council provided the complainant with its public interest considerations which relied heavily on the burden on the Council imposed by this request, and by future similar requests.

## **Scope of the case**

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10. The complainant contacted the Commissioner on 9 March 2017 to complain about the way her request for information had been handled.
11. The complainant advised the Commissioner that she considers the Council’s position in terms of making this information available constitutes a breach of the EIR. The complainant asserted that the requested information is not easily accessible and it is manifestly unreasonable to expect an enquirer to submit an individual request in respect of every property in the Council’s administrative district to obtain a list of proposed traffic schemes.
12. The complainant asserted that the Council’s methods “are intended to act as a deterrent to personal search companies and are an abuse of its positions as a data handler” and she argued that the Council’s approach to this request amounts to anti-competitive behaviour.
13. The complainant has referred the Commissioner to the websites of three councils’ where proposed traffic schemes (approved but not implemented) are listed.
14. The complainant also asserted that the Council makes decisions about traffic schemes by reference to roads/areas and document approval in an Officer Decision Record. She holds the belief that the Council will have a list of affected roads so that decisions can be made at an operational level and to enable it to maintain the information at an individual address level. The complainant advised the Commissioner that she rejects the Council’s position that the cost of preparing and maintaining such a document is unreasonable and she asserted that the information could be easily provided by the supply of the Officer Decision Report, which, in her opinion, should be available to the public.
15. The Commissioner has investigated the Council’s reliance on Regulation 12(4)(b) as its grounds for refusing the complainant’s request.

## Reasons for decision

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### Regulation 12(4)(b) – manifestly unreasonable

16. 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.
17. In this case, the council cited this exception on the grounds that the cost and burden of dealing with the request is too great.
18. 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 (the 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.
19. 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.
20. 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

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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

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

21. 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.

22. The Council responded to the Commissioner's enquiries by sending her a pdf copy of its Road traffic Scheme searches for 26 October 2017.

23. The document illustrates a spreadsheet of the Road Traffic Orders (RTOs) in operation on 26 October and it lists, among other things, the locations of individual RTOs, the dates of approval, whether the TROs are approved and whether they are operative. In most instances the spreadsheet provides hyperlinks to council documents relating to each RTO.

24. The Council explained why it had sent the Commissioner a document relating to RTOs in operation on 26 October 2017. The Council informed the Commissioner that the spreadsheet is a working document which is amended on a daily basis and consequently it is not possible to provide

information retrospectively for any given date such as the date when the complainant submitted this request.

25. On 26 October there were 160 separate orders listed on the Searches Traffic Scheme spreadsheet which covers the whole of Cheshire East Borough. These operative RTOs were at different stages of the process.
26. The spreadsheet does not detail what properties are adjacent to and affected by the RTOs. To determine these details further searches would need to be undertaken.
27. At 1 April 2017 there were 171,803 properties registered within the Borough for council tax. Based on a notional 5 minutes per property, the Council estimates that it would take its offers upwards of 14,000 hours to provide information in respect of the complainant's request on a property-by-property basis, i.e. to link each property with the 160 separate RTOs.
28. The Council described its Traffic Scheme Process, advising the Commissioner that the Searches Traffic Scheme spreadsheet is held on a Cheshire East Highways SharePoint Site which is accessible to its Land Charges Team.
29. Information is added to the spreadsheet during the process from the signing of the record to the implementation or the cancellation of a given Road Traffic scheme. Firstly an Officer Delegated Record (ODR) is signed which authorises the proposed Traffic Road Order (TRO) to be advertised. From that date, the Council considers the specific scheme to be approved but not implemented. Public consultation takes place and when a scheme is implemented the spreadsheet is updated again.
30. Due to the changing nature of the Council's spreadsheet the copy which the Council supplied to the Commissioner was out of date by the following Monday.
31. The Council asserts that there is no way to determine the information required by the complainant other than to undertake searches against identified properties. There is an agreed process in place for obtaining this information from a local authority which the complainant is aware of, which requires the submission questions 3.6 a – I on the Con 29R<sup>2</sup> pro-forma together with the payment of the appropriate fee.

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<sup>2</sup> The CON29 form is made up of two parts: Part I Standard Enquiries and Part II Optional Enquiries of a Local Authority. The CON29 is considered a warning document for a

32. Having considered what the Council has told her in respect of how it records and up-dates its RTO information, the Commissioner has decided that the complainant's request is manifestly unreasonable. The Commissioner accepts that the information required by the complainant would take the Council well in excess of the 18 hours required by the appropriate limit to collate for any given date. In the Commissioner's opinion it would be unreasonably burdensome and an unwarranted use of the Council's resources to comply with the complainant's request and therefore the Commissioner has therefore decided that Regulation 12(4)(b) is engaged.
33. The Council's reliance on Regulation 12(4)(b) is subject to consideration of the public interest test. The Commissioner must decide whether it would be in the public interest for the Council to comply with the complainant's request irrespective of whether the request is manifestly unreasonable.

*The public interest test*

34. 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.
35. In this case the information requested by the complainant would assist the public in understanding the full extent of the RTOs in place in the Council's administrative area at a particular moment in time.
36. To a significant extent the public interest inherent in the publication of the information requested is reduced by the consultations which have taken place in respect of proposed RTOs and by the Council's publication of information about RTOs on its website at:

[http://www.cheshireeast.gov.uk/search.aspx?search\\_keywords=Traffic%20order](http://www.cheshireeast.gov.uk/search.aspx?search_keywords=Traffic%20order)

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prospective purchaser. Part I enquiries are produced for a standard fee and contain a list of standard questions regarding the property and the area where it is situated, including road schemes, both current or proposed within 200 metres of the property. Part II Optional enquiries are only answered if specifically requested by the applicant and are subject to an additional charge per additional enquiry.

37. The complainant has asserted that the Officer Decision Record for RTOs should be proactively made available to the public and therefore the Commissioner asked the Council to comment of this assertion.
38. The Council advised the Commissioner that the information it publishes on its website is accurate and up to date and that this is especially important in relation to information used for land property searches. The Council stated:

“The Public Authority is responsible for the publication of accurate information and could be sued if inaccurate information is used. This could lead to serious repercussions for the purchaser. In order to ensure that the website was up to date, and due to the constantly changing nature of this information: officers would be required to continuously update the website. This is manifestly unreasonable and would divert officers from their normal day to day duties to the detriment of other service users.”
39. The Council argues that undertaking the work necessary to meet the complainant’s information needs would be additional to the activities of officers who are required to respond to CON29 forms which are submitted as part of its normal business. It also argues that the requested information would be of limited benefit as it cannot be used for Land Charges purposes.
40. The complainant has drawn the Commissioner’s attention to three local authorities which make RTO information available on their websites. The Commissioner therefore asked the Council why it has not adopted the same protocol. The Council replied to this enquiry by advising the Commissioner that it covers a large geographic area and is one of the biggest local authorities. Its road network is considerable and as a consequence of its size, changes in road traffic schemes are equally considerable. Having to constantly update the information within the scope of the complainant’s request would require a disproportionate amount of officer time to carry out the searches and provide that information. The Council considers that it is sufficient for it to advertise its current consultations on its website.
41. The Council argues that undertaking this process would duplicate the work carried out in respect of responding to CON29 forms which is the process whereby the information requested by the complainant is already publicly available. When information is provided by the Council via the CON29 process, the information is guaranteed to be accurate, up to date and suitable for its intended purpose.
42. CON29 requests are deal with by the Council in accordance with the Conveyancing CON29R Law Society enquiries form. This is a legal



conveyancing document which corresponds to a specific residential property, commercial property or land enquiry. The responses made to CON29 enquiries are pertinent to the progression of purchases of property and they are time limited in their use due to the changing nature of the information relevant to those properties.

43. The Council argues that it has a responsibility to provide accurate information to ensure that no claim may be brought against it due to the use of inaccurate information being given to parties within a search.
44. Since 2010, the Council has provided a property-by-property response (free of charge) to customers seeking information relating to conveyancing questions. Such requests are made directly to the Council's Property Search Service department so that information may be made available via email links on the Council's website. The customer is then able to interpret this information by viewing it at one of the Council's customer service points. Alternatively, a requester may choose to pay a fee for CON29R.
45. The Commissioner notes that the complainant seeks a snap-shot of information relevant to the specific terms of his request. That information is not normally available under those specific terms. She accepts the Council's position that significant work would need to be done to provide the requested information and that this work is over and beyond the work the Council currently does in respect of how it records RTOs.
46. The Commissioner also accepts the Council's position that the requested information is subject to change on a daily basis and she notes that the Council proactively published related information on its website and makes full and proper responses to CON29 enquiries when they are received. The Commissioner recognises that the work required to respond to the complainant's request, and to any future regular request of this nature, would be a duplication and inefficient use of council staff time and resources.
47. In view of the combined weight which must be given to the duplication of work, the availability of related information and to the significant amount of work necessary to comply with the request, the Commissioner has decided that the public interest favours the maintenance of Regulation 12(4)(b). In the Commissioner's opinion, there is a stronger public interest in the Council being able to carry out its core functions without excessive disruption caused by complying with a significantly burdensome request.
48. The Commissioner supports the Council's position that it needs to give priority to its wider obligations to deliver its services effectively in the

current difficult economic climate. The Commissioner accepts that providing the complainant with the requested information would only show notices which are open at the time of that request. She notes that RTOs may be issued at any time and, for the information requested to be of any use, further regular requests would have to be made placing additional burden on officers and diverting them from their other work.

## **Other matters**

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49. The Commissioner has considered the complainant's assertions that the Council's methods "are intended to act as a deterrent to personal search companies and are an abuse of its positions as a data handler" and that the Council's approach to his request amounts to anti-competitive behaviour.
50. The Commissioner rejects both assertions on the grounds that the Council makes the relevant information available to the public and it has clearly defined procedures for doing so.
51. Not making the information available to the complainant in the format she requires may irritate the complainant and cause her necessary work: It does not constitute anti-competitive behaviour or an abuse of the Council's position as a data handler. The Commissioner considers that the Council's practices of making this type of information available to the public are both transparent and fair to all potential users of that information.

**Right of appeal**

52. 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)

53. 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.
54. 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**