

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

**Decision notice**

**Date:** 15 November 2018

**Public Authority:** Hampshire County Council  
**Address:** The Castle  
Winchester  
Hampshire  
SO23 8UJ

**Decision (including any steps ordered)**

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1. The complainant has requested from Hampshire County Council (the Council) information consisting of emails, minutes, internal memos, reports and maps which make reference to "*Ranvilles Lane*". The Council considered that responding to the request would place a substantial and unreasonable burden on its resources and therefore refused the request as manifestly unreasonable, citing Regulation 12(4)(b) of the EIR.
2. The Commissioner's decision is that the Council has applied Regulation 12(4)(b) to the complainant's request correctly. She finds that the weight of the public interest lies in maintaining the Council's application of this exception.
3. However, the Commissioner also found that it is likely that the Council held information falling within the scope of the request that would not be environmental, which therefore should be dealt under the FOIA regime.
4. The Commissioner requires the Council to take the following steps to comply with the legislation.
  - Issue a fresh response in relation to any information within the scope of the complainant's request that falls outside the EIR regime.

5. The Council 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 FOIA and may be dealt with as a contempt of court

## **Request and response**

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6. On 13 February 2018, the complainant wrote to the Council and requested information in the following terms:

*"Records or documents created or amended in the last 3 years including but not limited to maps, emails, reports and internal memos and minutes which make reference to Ranvilles Lane, Fareham or Titchfield (which if there is a spelling mistake may be ranvills, Ranviles, Ranvils, Ranvilles' or Ranville's). This request covers all of HCC except for Leisure and Cultural services, Childrens Services and adult social care, births, deaths and health."*

7. The request was followed with a lengthy email correspondence between the complainant and the Council with the purpose of narrowing down the scope of the request because the Council considered that the original request was too broad.
8. On 7 March 2018, the complainant resubmitted the request in a refined format, which read as follows:

*"I require information from the following departments: Economy, Transport, Legal and the Environment departments. Please provide the document types which are only produced in hard copy (1/2/15 to date).*

*A copy of all records, produced or updated since 1/2/15 which make reference to 'Ranvilles Lane', including but not limited to emails, minutes, internal memos, reports and maps."*

9. On 16 March 2018, the Council responded by asserting that it did not consider that the request was sufficiently refined and refused it relying on Regulation 12(4)(b) of the EIR. The Council claimed that complying with the request would place a substantial and unreasonable burden on the Council's resources.
10. The complainant requested an internal review on 22 March 2018. The Council sent the complainant the outcome of its internal review on 11 April 2018. The Council upheld its original position.

## Scope of the case

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11. The complainant contacted the Commissioner on 23 April 2018 to complain about the way her request for information had been handled.
12. During the course of her investigation the Commissioner was informed that the complainant, in the meantime, had put forward additional requests to the Council.
13. However, the Commissioner informed the complainant that these requests should be treated separately by the Council and fall outside of the scope of the present investigation.
14. The scope of this notice is to determine whether the Council was correct to rely on Regulation 12(4)(b) as its grounds for refusing the complainant's request quoted above at paragraph 7.

## Reasons for decision

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### Is the information environmental?

15. The Council dealt with the complainant's request under the provisions of the EIR on the grounds that the requested information satisfies the definition of environmental information provided by Regulation 2 of the EIR.
16. Regulation 2(1)(c) of the EIR defines environmental information as any information on activities affecting or likely to affect the elements of the environment listed in Regulation 2(1)(a). The requested information is for correspondence, maps, reports, internal memos and/or minutes about a specific location. The Commissioner accepts the likelihood that the material falling within the scope of the request will include information that relates to a matter which will affect at least one of the elements listed in Regulation 2(1)(a). Therefore, in relation to that information, the Commissioner agrees with the Council that the request was properly dealt with under the EIR.
17. However, the Commissioner notes that as the scope of the request is very broad, it is likely that the Council is in possession of information which is not environment related and would have to be dealt with under the FOIA.
18. The Commissioner bases this judgment on the wording of the request, where the complainant stated "*I require information from the following departments: Economy, Transport, Legal and the Environment*"

*departments...".* The Commissioner believes that there is a significant chance that some of the specified departments of the Council will hold information within the scope of the request that is not environment related. This could include, for example, information about council tax bands or parking tickets.

19. It is the Commissioner's view that in order to remedy this omission, the Council must issue a fresh response, as per paragraph 4 of this decision notice, after considering whether it does hold non-environmental information within the scope of the request.
20. Having concluded that the requested information will include environmental information and bearing in mind that the Council has confirmed that it is relying on Regulation 12(4)(b) – (manifestly unreasonable) of the EIR to refuse to comply with the complainant's request, the Commissioner has gone on to examine whether the Council was correct when it relied on Regulation 12(4)(b).

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

21. The Council's position is that the request is manifestly unreasonable on the grounds that to comply with it would impose a significant and detrimental burden on the Council's resources, in terms of officer time and cost.
22. 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. A request can be refused as manifestly unreasonable either as it is considered vexatious, or on the basis of the burden that it would cause to the public authority. In this case the Council is citing Regulation 12(4)(b) due to the burden of the request.
23. The EIR differ from the FOIA in that there is no specific limit set for the amount of work required by an authority to respond to a request, as that provided by section 12 of the FOIA.
24. 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. 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.
25. Regulation 12(4)(b) sets a 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'. The Commissioner considers that the term 'manifestly' means that there must be an obvious or clear quality to the identified unreasonableness.

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

27. Therefore, in assessing whether the cost or burden of dealing with a request is clearly or obviously unreasonable, the Commissioner will consider the following factors:
- 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.

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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

- The presumption in favour of disclosure under Regulation 12(2).
  - The requirement to interpret the exception restrictively.
28. The Council responded to the Commissioner's enquiries by sending her its arguments in support of its position.
29. The Council explained that it holds information, which potentially fall within the scope of the information request, both in electronic and paper format stored in different systems for storing files, such as:
- *Hantsfile* – an electronic document management system which is used across the majority of departments;
  - *Confirm* - a system for logging Highways cases and related documents; and
  - *Civica* and *Datix* two separate systems for legal cases.
30. The Council provided a detailed description on features and characteristics of these databases and of the searches that it has undertaken in its efforts to identify the requested information.
31. The following description demonstrates how the Council came to the conclusion that responding to the complainant's request would impose an unreasonable burden to the Council and therefore would trigger the application of Regulation 12(4)(b).

*Hantsfile*

32. The Council stated that this document management system allows search by title only. The Council explained that in order to identify information which would fall within the scope of the complainant's request, it undertook searches using the phrase *Ranvilles Lane* and other alternate spellings (such as: *Ranvilles*, *Ranvills*, *Ranviles*, *Ranvils*, *Ranvilles'* and *Ranvile's*) in the title.
33. These searches identified 30 documents which contain one of the keyword in their titles. However, the Council maintains that it would not fulfil the complainant's request, as this sought "*A copy of all records which make reference to 'Ranvilles Lane'*".
34. The Council maintains that in order to identify any piece of information with a reference to *Reviles Lane*, it would be necessary to conduct manual searches of each potentially relevant document. One of the departments which is likely to be in possession of information falling within the scope of the request would be the Economy, Transport and Environment department (ETE). ETE has 16 teams which cover specific

issues, such as: strategic transport, traffic management, road safety, highways, street lighting etc.

35. The Council explained that additional searches were conducted across these 16 teams, using alternate keywords related to locations such as 'Fareham', 'Titchfield' and 'Stubbington' which relate to relevant geographical areas. These searches identified 2,699 documents in total.
36. The Council stated that ETE have tested a sample of ten of the 2,699 documents identified on Hantsfile and it took them on average 1.5 minutes to read through each document: *"With this estimate, reading through all of the documents identified above would take over 70 hours, far exceeding the 18 hour limit applied to s12 of the Freedom of Information Act. At £25 per hour for officer time, this request would cost at least £1700, which far exceeds the £450 appropriate limit under the FOIA."*

#### Confirm

37. Searches on this platform identified 100 cases that relate to *Ranvilles Lane*. The Council stated that most of these cases derived from the issues reported by members of the public. The Council explained that each of these records is likely to include personal data which means that it would require additional effort to consider redaction and application of the relevant exception under the EIR.

#### Civica & Datix

38. Searches on this platform identified 36 documents and 23 cases. Like in *Hantsfile* these searches allow only identifying one of the keywords used in the title of the documents or cases, but not when it is used in the body text of a document. Further searches would be required in order to establish if any other relevant documents were held.
39. Having considered what the Council provided in respect of how it records and maintains the relevant information in this case and the actions it undertook to address the request in this case, the Commissioner is of the view that the complainant's request is manifestly unreasonable. The Commissioner accepts that the information sought by the complainant would take the Council a very substantial amount of time, and that this means that the request is manifestly unreasonable. Regulation 12(4)(b) is, therefore, engaged in relation to the environmental information falling within the scope of the complainant's information request.

#### ***The public interest test***

40. The Council's reliance on Regulation 12(4)(b) is subject to consideration of the public interest test. The Commissioner must decide whether the

public interest in the maintenance of the exception outweighs the public interest in disclosure of the requested information.

41. 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 enhances transparency and provides accountability of public authorities.
42. The public interest test in this case concerns whether the Council should be required to carry out activities to locate and retrieve the information described by the complainant's request where to do so would be time consuming and costly.

*Public interest arguments in favour of disclosure*

43. The Commissioner recognises that the request relates to issues that are of concern to the complainant, and that some of these issues may have a direct impact on the complainant's community. The disclosure of the requested information may therefore allow the complainant to better understand the basis and the nature of these issues.
44. The Council appreciates that greater openness and accountability of public authorities would benefit the public as it would enable greater access to information on topics which affect their lives. It can also have a positive influence on the quality of public debate on any issues and could enhance accountability in the spending of public money.

*Public interest in favour of maintaining the exception*

45. However, the Council claims that the amount of time and its resources required to comply with the present request is disproportionate to the potential value of disclosing the information requested. Having found that the exception is engaged, the Commissioner recognises that there is a public interest in the Council not being required to expend its resources on a manifestly unreasonable request.

*Balance of the public interest*

46. The Commissioner considers that there is merit to the public interest arguments which favour compliance with the request but she must also give weight to the effect that this would have on the Council in terms of causing a disproportionate and unjustified level of disruption.
47. The Commissioner's position is that the public interest in this case lies in ensuring that the Council's resources are used effectively and are not diverted from its other core business functions. Therefore in all of the circumstances she considers that dealing with the complainant's



requests within the scope of this case do not best serve the public interest. Consequently the public interest lies in favour of maintaining the exception under Regulation 12(4)(b).

**Regulation 9 – Duty to advise and assist**

48. The Commissioner also finds that the Council has considered the duty to advise and assist which is required by virtue of Regulation 9 of the EIR.
49. As it is described above in the chronology of request and response (see paragraphs 6-9 of this Decision Notice) the Council, in the initial phase of the consideration of the request, actively engaged by explaining to the complainant that the scope of the request was extremely broad and advising how to narrow it down.
50. In addition, the Council advised the Commissioner that during the course of her investigation, it was in contact with the complainant who submitted two additional information requests narrower in scope, to which the Council responded positively.
51. In light of the above, the Commissioner considers that the Council has complied with its obligations under Regulation 9 of the EIR.

## Right of appeal

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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 .....**

**Ben Tomes**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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**SK9 5AF**