

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 17 January 2019

Public Authority: Wiltshire Council

Address: County Hall
Bythesea Road
Trowbridge
BA14 8JN

Decision (including any steps ordered)

1. The complainant has requested information in relation to planning applications that have been submitted to Wiltshire Council (the Council) for wooden garden sheds or any out-building for a certain period of time. The Council cited regulation 12(4)(b) of the EIR to refuse the request, on the grounds that it was manifestly unreasonable due to the significant burden it would impose on the Council in terms of cost.
2. The Commissioner's decision is that the Council was entitled to apply regulation 12(4)(b) to refuse the request. She finds that the public interest lies in maintaining the Council's application of this exception
3. The Commissioner does not require the Council to take any steps to ensure compliance with the legislation.

Request and response

4. On 18 April 2018, the complainant wrote to the Council and requested information in the following terms:

"I am making two requests under the Freedom of Information Act for the following information:-

(1) The number of Full Planning Applications that have been submitted to Wiltshire County Council since 01st January 1993 for a Wooden Garden Shed or any Out-Building or temporary structure with a floor footprint measuring less than 3 meters by 2 meters.

Please include the Planning Application Reference Number and footprint size of all applications made.

(2) The number of Full Planning Applications that have been submitted to Wiltshire County Council since 01st January 1993 which have been approved with conditions including the removal or restriction of any Permitted Development Rights, specifically including ANY of the following categories from the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008, (or any similar restriction under the Acts of Parliament relevant to the application year):-

Class A - enlargement, improvement or other alteration of a dwelling house

Class B - additions etc to the roof of a dwellinghouse

Class C - other alterations to the roof of a dwellinghouse

Class D - porches

Class E - buildings etc incidental to the enjoyment of a dwellinghouse

Please include the Planning Application Reference Number and details of which class was removed or restricted of all applications made."

5. The Council responded on 14 May 2018. It informed the complainant that due to the nature of the requested information which concerned the environment, it dealt with the request under the EIR. The Council refused to comply with the complainant's request and relied on regulation 12(4)(b), on the grounds that the request was manifestly unreasonable due to the significant burden imposed on the Council by the request in terms of cost.
6. Remaining dissatisfied, on the same day the complainant requested the Council to review its position.
7. Following an internal review the Council wrote to the complainant on 3 July 2018. It upheld the original position.

Scope of the case

8. The complainant initially contacted the Commissioner on 14 May 2018 to complain about the way his request for information had been handled. However, since the complainant had not by that time received the outcome of the internal review, the Commissioner advised him to wait for the statutory deadline to lapse.
9. After receiving the outcome of the internal review, on 4 July 2018 the complainant wrote to the Commissioner to express his dissatisfaction with the outcome and requested the Commissioner to conduct an investigation into the refusal of his request by the Council.
10. 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.

Reasons for decision

Is the requested information environmental?

11. Information is "environmental" if it meets the definition set out in regulation 2 of the EIR. Environmental information must be considered for disclosure under the terms of the EIR.
12. Under regulation 2(1)(c), information on any measure that will affect, or be likely to affect, the elements of the environment referred to in 2(1)(a) or the environmental factors referred to in 2(1)(b) will be environmental information. In the present case, the requested information relates to planning applications for certain types of construction. The planning process is clearly a measure that may affect several of the environmental elements and factors listed in regulations 2(1)(a) and (b). The Commissioner therefore considers it appropriate to consider the request as seeking environmental information under the terms of the EIR.

Regulation 12(4)(b) – manifestly unreasonable

13. 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.
14. 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 the request places on it.

15. The EIR differ from the Freedom of Information Act 2000 (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.
16. 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.
17. 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.
18. 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 case¹ 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."

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

19. 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.
 - The presumption in favour of disclosure under Regulation 12(2).
 - The requirement to interpret the exception restrictively.
20. The Council responded to the Commissioner's enquiries by sending her its arguments in support of its position. The Council initially clarified that as a unitary council it was established in 2009, it is the successor authority to Wiltshire County Council, Kennet Council, North Wiltshire Council, Salisbury Council and West Wiltshire Council. The records of these five former councils were transferred to newly established Wiltshire Council in 2009. Therefore, in order to identify the information falling within the scope of the requests, two sets of records would have to be examined (the first set being records per the period 1993-2008 and the second set being from 2009 until the date of the request).
21. The Council provided the Commissioner with a spreadsheet of the numbers of files that could potentially hold information falling within the scope of the requests, categorised in: files contained on the website, files stored on compact discs, microfiches and physical files stored externally by an external storage provider. According to the Council, the total number of files that would have to be examined individually to identify information falling within the scope of request (1) is 7943 files and it would require 1324 hours to perform that operation, whilst for request (2) there are 66921 files to be examined and it would require 5575 hours.

22. The Council confirmed that the search estimates are based on the most efficient methods of complying with the request. In its efforts to identify the information falling within the scope of the complainant's request the Council confirmed that its database administrator was also involved. The Council explained that when the database administrator tried to filter the database records for example using the keyword "outbuilding" and "shed", whilst this provided details on outbuildings and sheds, "it has also identified records where the word shed forms part of a word e.g. 'finished'."
23. In addition, the Council stated that "the footprint size of a development is not recorded in the database, or any of the legacy systems. Despite the requestors belief that a database administrator could carry out a simple command line search it is not possible to search for a field that does not exist."
24. In relation to the records held since 2009, the Council explained that it would not be possible to provide the requested information as planning applications are not recorded in a manner that allows searches to be performed which would capture the requested information. The detailed specifications of the information requested are not recorded as special categories in the Council's database.
25. In the course of handling the request and responding to the Commissioner's enquiries, the Council concluded that "the requested information is simply not recorded on the database we [the Council] hold from 2009. The only place the requested information is held is in the individual planning application files which would have to be manually searched to identify and retrieve the requested information."
26. With regards to pre 2009 records, the Council stated that they "are held in multiple location and various formats which is due to recording process of the former District Councils. Records of planning applications are held in manual files deposited with an external storage provider, on compact discs, on microfiche, in a database and are posted to our [the Council's] website."
27. In order to illustrate the cost related impact that the necessary searches would cause should they have been performed, the Council explained that it is estimated that there are 13,644 files deposited with the external storage provider. This number includes only physical files. According to the Council, these files are contained in 1,760 boxes. The Council confirmed that "The provider charges the council £0.67 to retrieve a box of files and £1.46 to return a box to storage... To merely retrieve the manual files and return them to the storage would therefore cost the council £3,748.20 before any inspection of the contents were conducted."

28. The Commissioner is satisfied that it would be manifestly unreasonable, on the grounds of cost, for the Council to work through such a large number of case files to locate and retrieve the requested information. The time it would take to do so would exceed a reasonable time period. In reaching this view, the Commissioner has been guided by what is considered to be a reasonable time period under FOIA.
29. Regarding the requestor's expectations that the information should be simple to extract by applying a command line by a database administrator, the Commissioner notes that the assumptions upon which this position is based do not appear to be correct. The Council does not have specific categories relevant to the information requested in its database, therefore the information would have to be extracted by examining the case files individually. The Commissioner considers that this would be a significant diversion of the planning service resource leading to an inevitable disruption in the delivery of core services.
30. Having considered what the Council provided in respect of how it records and maintains the relevant information in this case and the necessary actions it has to undertake in order to address the requests 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 to collate, and that this means that the request is manifestly unreasonable. Therefore the Commissioner's conclusion is that regulation 12(4)(b) is engaged in relation to the complainant's information requests.

The public interest test

31. 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.
32. 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.
33. 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

34. The Commissioner appreciates 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.
35. The Council recognises that there is an inherent public interest in environmental information; greater public awareness and understanding of environmental matters contributes to a more informed public debate and holds public authorities to account for their decisions. Further, the Council noted that *"Publication of the specific information would provide the public with a picture of the number of planning permissions granted over the previous 25 years albeit only to outbuildings and sheds."*

Public interest in favour of maintaining the exception

36. However, the Council asserted that to conduct the necessary searches would impose *"a disproportionate burden on officers' time and cause significant disruption to officers' daily workload resulting in the delay to other planning applications which would not be conducive to the efficient running of a public service."*
37. Moreover, the Council maintains that the information requests and the subject matter of this complaint are related to an ongoing appeal against the conditions applied on a planning permission issued to the complainant recently. According to the Council, this represents *"obviously a private matter to which there is limited, if any public interest."*
38. The Council insists that *"there is no public interest in the Council spending over £3,000 to retrieve records from archived storage and then spending an estimated 932 working days to search through 25 years of records to provide information which is relevant only to the requestors appeal against conditions of his planning permission."*
39. Having found above that the request was manifestly unreasonable on the grounds of its burden upon the Council, the Commissioner has also taken into account the public interest inherent in that finding. There is a public interest in avoiding that diversion of the Council's resources and this is a valid factor in favour of maintenance of the exception in this case.

Balance of the public interest

40. The Commissioner recognises the importance of accountability and transparency in decision-making within public authorities, and the

necessity of a public authority bearing some costs when complying with a request for information. However, in considering the public interest test for this matter, the Commissioner must assess whether the cost of compliance is disproportionate to the value of the request.

41. Having examined the submissions of both parties, 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 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

42. 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.
43. The Council explained that in the process of handling the request, it explained to the complainant the complexity of the matter and its inability to filter its database in order to provide the requested information.
44. In addition, the Council explained that its web-based database contains planning applications since 2009, whilst for the planning applications prior to this date the Council advised that the planning department makes these records available for inspection upon requests.
45. The Council also provided the complainant with a spreadsheet extracted from its database, containing all householder approvals dating from 2009, which enabled searches based on keywords.
46. 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

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

Ben Tomes
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