

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

Decision notice

Date: 9 October 2019

Public Authority: Leeds City Council
Address: Civic Hall
Calverley Street
Leeds
LS1 1UR

Decision (including any steps ordered)

1. The complainant has requested information relating to a particular building. Leeds City Council ("the Council") provided some information but refused the remainder of the request as manifestly unreasonable.
2. The Commissioner's decision is that the Council has failed to demonstrate, to her satisfaction, that the request would impose an unreasonable burden. She therefore finds that the Council is not entitled to rely on Regulation 12(4)(b) to refuse the request. The Commissioner also finds that the Council failed to disclose information within the scope of the request within 20 working days and failed to issue a refusal notice citing Regulation 12(4)(b) within 20 working days. She therefore finds that the Council breached Regulation 5(2) and 14(2) of the EIR.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the request, under the EIR, which does not rely on the exception at Regulation 12(4)(b).
4. 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 Act and may be dealt with as a contempt of court.

Background

5. On 14 September 2018, the complainant wrote to the Council and requested the following information:

"Under Freedom of Information legislation, I would like to request all information held by the Council, relating to the property known as Three Cottages, Green Road, Meanwood, including the Flat above.

"Could you please include all planning information, building control information and licensing correspondence within this request, including any emails or correspondence between officers and to or from officers of the Council to any person. To avoid repetition I am happy for any information that is already published on the Council's Public Access website not to be included. I am also aware that any personal information, i.e. names and addresses, may be redacted."

6. The Council refused this request, relying on Regulation 12(4)(b) of the EIR (manifestly unreasonable) to do so.

Request and response

7. On 26 October 2018, the complainant submitted a further refined request in the following terms:

"given that the majority of the information I am requesting will likely be held in email form, I can see no reason why it should be in any way onerous to providing the information I am seeking, particularly as I have already made clear that I do not require any information already in the public domain, nor do I require any correspondence which has already been forwarded to me. That should vastly reduce officers' time. I am also happy to limit this request to recently planning applications, so do not require any information prior to 2017.

"On that basis therefore, I would like to restrict my request to the following:

"[1] Any emails or correspondence relating to any pre-application discussions within the past two years in regard to the premises known as Three Cottages/Meanwood Park Cafe.

"[2] Any emails or correspondence relating to any planning applications submitted over the past two years in regard to

the premises known as Three Cottages/ Meanwood Park Cafe that are not currently in the public domain, including 18/04344, 18/04582, 18/04598, 18/05141, 18/05379 and 18/06027.

"[3] Any email/correspondence enquiries made in regard to the premises known as Three Cottages/ Meanwood Park Cafe via the Council's Properties Section of Planning.

"[4] Any emails or correspondence relating to discussions held in regard to a timber structure/listed property or part thereof, possibly known as Cheesecake House/Hall.

"[5] Any emails/correspondence referred to the Parks Department relating to the premises known as Three Cottages/ Meanwood Park Cafe.

"[6] Could you also forward a further copy of the drawing attached to your last email which shows a timber structure, as this has been cropped and so does not show all information. Could you also provide a date for this drawing, as it appears not to be dated.

"I would ask that this includes, but is not limited to, correspondence between officers, between officers and councillors, between officers and any representative of RDF, their representatives or subsidiary companies." [sic]

8. On 28 November 2018, the Council responded to the request. It provided some information.
9. On 30 November 2018, the complainant contacted the Council again as she believed that some information was missing and again on 1 December 2018 when she added to her request:

"Could you also confirm that both Parks and Countryside and Property are stating they have had no correspondence or involvement in Three Cottages, as there appears to be no correspondence whatsoever from these two departments."

10. The Council now refused the request as manifestly unreasonable and relied on Regulation 12(4)(b) of the EIR.
11. On 11 January 2019, the complainant queried the use of the exception. The Council treated that correspondence as a request for an internal review and responded to the complainant to say that it considered that it was entitled to rely on Regulation 12(4)(b). It also provided the

complainant with some additional information as to why the request was manifestly unreasonable.

Scope of the case

12. The complainant contacted the Commissioner on 12 March 2019 to complain about the way her request for information had been handled.
13. The Commissioner considers that focus of her investigation is to determine whether the Council was entitled to rely on Regulation 12(4)(b) to refuse the request.

Reasons for decision

Was the requested information environmental?

14. Regulation 2(1) of the EIR defines environmental information as being information on:
 - (a) *the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;*
 - (b) *factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);*
 - (c) *measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;*
 - (d) *reports on the implementation of environmental legislation;*
 - (e) *cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and*
 - (f) *the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be*

affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);

15. The Commissioner has not seen the requested information but, as it is information relating to planning applications, she believes that it is likely to be information about “measures” affecting the elements of the environment. For procedural reasons, she has therefore assessed this case under the EIR.

Was the request manifestly unreasonable?

16. Regulation 5(1) states that:

“a public authority that holds environmental information shall make it available on request.”

17. Regulation 12 of the EIR states that:

(1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if—

(a) an exception to disclosure applies under paragraphs (4) or (5); and

(b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

(2) A public authority shall apply a presumption in favour of disclosure.

(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that—

(b) the request for information is manifestly unreasonable;

18. The Commissioner considers that a request can be manifestly unreasonable for two reasons: firstly, if it is vexatious and secondly where it would incur unreasonable costs for a public authority or an unreasonable diversion of resources.

19. The EIR do not provide a definition of what constitutes an unreasonable cost. This is in contrast to section 12 of the FOI Act under which a public authority can refuse to comply with a request if it estimates that the cost of compliance would exceed the “appropriate limit”. This appropriate limit is defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the

Regulations") as £600 for central government departments and £450 for all other public authorities.

20. Although the Regulations are not directly applicable to the EIR, in the Commissioner's view they can provide a useful point of reference when public authorities argue that complying with a request would incur an unreasonable cost and therefore could be refused on the basis of regulation 12(4)(b).
21. The Regulations allow a public authority to charge the following activities at a flat rate of £25 per hour of staff time:
 - Determining whether the information is held;
 - Locating the information, or a document which may contain the information;
 - Retrieving the information, or a document which may contain the information; and
 - Extracting the information from a document containing it.
22. Using the Fees Regulations as a guideline, the Commissioner asked the Council to provide a detailed estimate of the time it would take to comply with the request. An officer of the Council responded to say that:

"these requests all concerned the same particular matter and cannot, as such, be seen in isolation. In total, prior to applying Reg 12(4)(b) to these outstanding requests, the Council had disclosed 192 pages of information to [the complainant] regarding Three Cottages (not including documents available in the public domain through the planning public access system). It had also addressed a number of queries [the complainant] had regarding the property.

"With regard to the request of 26th October alone, I was required to individually locate all withdrawn planning applications regarding this site, and then consider all documents associated with these (that were not already public domain) to ensure that any personal information that required redaction was removed. I was also required to locate email correspondence from various Council officers and was, again, required to consider and redact this.

"Whilst we do not hold an item by item breakdown of how much time each of these separate requests took to process, the Council estimates that, conservatively, it took 15 hours to locate and retrieve all of the information requested, and a further 5 hours to consider these documents for personal data (and any other information that might require redaction).

"With regard to the remaining requests for which 12(4)(b) was applied, it must be noted that Three Cottages was previously a Council building, under the ownership of the Parks and Countryside service and, consequently, a significant amount of information exists regarding it. For example, whilst the property was disposed of on 8th January 2009, the Council's Property Service maintains hard copy files regarding it (including correspondence) in archive. There are two such volumes for Three Cottages referenced on our Property Services file system and we estimate, based on the average size of our files, that these could contain in excess of 300 pages of correspondence/documents.

"Furthermore, as the property in question forms part of Meanwood Park (and is now a privately owned café) there will be a large amount of correspondence held across various officers in the Parks and Countryside service that refer to it. This is not possible to estimate but to locate this information would necessitate contacting a considerable number of officers and asking them to undertake searches of their emails for any reference to the café. This correspondence would then need to be read and redacted.

"Finally, the potential extension to the café consists of the erection of a listed wooden structure that has been stored for a number of decades by the Council's Parks and Countryside service. As such, a significant amount of correspondence exists between the service, and between the Council's Property Service regarding the storage location of this structure. This day-to-day operational information is, essentially, completely separate to [the complainant]'s concerns regarding the structure's re-erection but would still fall within the terms of her request. In an effort to be of best assistance, the Council did, however, locate 64 pages of correspondence which would be of assistance concerning this matter."

23. Having considered the Council's submission, the Commissioner noted that the Council had clearly spent a significant amount of time responding to requests from the complainant – although she was not convinced that the Council had provided a robust estimate of the time it had spent. However, she was less convinced about the further burden required to fulfil the request.
24. For example, the Council argued that it would need to search a 300-page file held by its property services department which covered the period when it was owned and maintained by the Council. Yet the property in question was disposed of in 2009 and the complainant had restricted her request to information created after 2017 only.

25. The Commissioner also noted the Council's reference to the large number of officers across the parks and countryside service who it claimed would need to search their emails for relevant information. However, it was not clear why the Council had not already made any attempt to contact these officers at the point at which it which it responded to the request (ie. before it attempted to claim the request was manifestly unreasonable).
26. Given the time that appeared to have already been spent on responding to this and the previous requests, the Commissioner contacted the Council again to seek more detailed explanations as to the size of the burden that would be imposed upon the Council if it were to respond to the request in full. She suggested that the Council should carry out a sampling exercise involving the officers most likely to hold additional information so that the remaining burden could be quantified. She asked for that information to be provided by Friday 13 September 2019.
27. On 13 September 2019, the Council responded to say:

"part of the difficulty in locating this additional information is that enquiries would need to be made across a significant number of officers in the Parks and Countryside service due to the broad nature of the request. In order to try and satisfy your query on this matter, however, I contacted the Chief Officer for the Parks and Countryside service, as well as those officers that report immediately to him. In addition, I also contacted the officer who wrote the Asset Management Board report concerning the timber structure referred to by [the complainant]. These officers have, consequently, searched their inboxes and have located a further 19 emails on the below. In addition, they have also referred this enquiry on to other relevant staff within the Parks and Countryside service (including the respective Parks area manager) who will, I would suggest, hold additional correspondence referencing Meanwood Park Café (and most probably a much more significant amount). Unfortunately, however, given the relatively short time frame in which to respond to your query, I have not yet received a further response from these individuals."
28. The Commissioner notes that Regulation 12(4)(b), if applied, relieves a public authority of its responsibility to provide the requested information. She therefore necessarily considers the bar for engaging the exception to be a high one and that a public authority must be able to provide an appropriate evidence base to back up its assertion that a request is manifestly unreasonable.
29. Whilst the Commissioner accepts that the request is broad and that the Council has spent a significant amount of time providing information to

the complainant in relation to the broader issue, she does not consider that the Council has supplied her with sufficient evidence to demonstrate that the request is manifestly unreasonable.

30. The Council's responses do not appear to demonstrate that it carried out a structured and methodical search when it first responded to the request. The Council appears to have made little or no effort to establish the extent of the information it held within the scope of the request and where within the organisation that information was held. It was able to offer no detailed, quantifiable evidence to the Commissioner to set out why the request had imposed such a burden or how much further information it might hold within the scope of the request – despite being offered numerous opportunities to do so.
31. The Commissioner therefore concludes that the Council has failed to demonstrate that the request was manifestly unreasonable and it is thus not entitled to rely on Regulation 12(4)(b) to refuse it.
32. As the exception is not engaged, there is no need for the Commissioner to consider the balance of public interest.

Timeliness

33. Regulation 5(2) states that such information shall be made available "as soon as possible and no later than 20 working days after the date of receipt of the request."
34. Regulation 14(2) states that, where a public authority wishes to refuse a request "*the refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.*"
35. From the evidence presented to the Commissioner in this case, it is clear that the Council did not provide all the information within the scope of the request within 20 working days and it also failed to issue its refusal notice within 20 working days. It therefore breached both Regulation 5(2) and Regulation 14(2) in the way it responded to this request.

Right of appeal

36. 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@justice.gov.uk

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

37. 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.
38. 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

Pamela Clements
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