

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

Date: 13 December 2019

Public Authority: Stevenage Borough Council
Address: Daneshill House
Danestrete
Stevenage
Hertfordshire
SG1 1HN

Decision (including any steps ordered)

1. The complainant has requested from Stevenage Borough Council (“the Council”) information about a proposed town centre redevelopment scheme. The Council refused to comply with the request, citing regulation 12(4)(b) (request is manifestly unreasonable) of the EIR.
2. The Commissioner’s decision is that the Council was entitled to apply regulation 12(4)(b) of the EIR to refuse to comply with the request.
3. The Commissioner requires no steps as a result of this decision notice.

Background

4. Stevenage was established as the UK’s first ‘New Town’ in 1946, as part of the government’s plan to alleviate post-war housing shortages by the mass relocation of populations in poor or bombed-out areas, to modern, purpose-built, suburban developments. 70 years later, the ‘SG1’ regeneration project aims to modernise Stevenage’s town centre.
5. The SG1 project is a £350 million, 14 acre redevelopment of Stevenage town centre, across public sector-owned land, to provide new homes, shops, bars and restaurants. Mace, the developer for the project (which

was appointed by the Council following a tendering exercise), is working in partnership with the Council to deliver the project. Its website says:

*"When complete the community will also benefit from an integrated public services hub comprising new state-of-the-art health centre, library, registry office, exhibition space and council offices all under one roof, as well as attractive new streets, squares and public realm, improving pedestrian and cycle connections across the town."*¹

Request and response

6. On 30 January 2019, the complainant wrote to the Council and requested the following information:

"All correspondence, minutes of meetings and information exchanged between MACE and Stevenage Borough Council over the last 18 months regarding the proposed SG1 development."
7. The Council replied on 19 February 2019. It said that the request was likely to exceed the appropriate cost limit, and it invited the complainant to refine the scope of the request.
8. The complainant replied the same day, stating that the time period specified in the request could be reduced to just the last six months.
9. The Council issued a refusal notice on 8 March 2019, stating that even with the reduced time period, the request was very wide in remit and scope. It said that compliance with the request would involve consulting with a number of council officers, across multiple departments, and it estimated it would therefore exceed the appropriate cost limit, under section 12 of the FOIA.
10. The complainant requested an internal review of the decision on 8 March 2019.
11. The Council responded on 11 April 2019, revising its position. Having previously dealt with the request under the FOIA, it now said that the request was for environmental information, and therefore that the EIR applied. It said that the requested information was exempt from disclosure under regulation 12(4)(b) (request is manifestly unreasonable) of the EIR, on the grounds that the request would take

¹ <https://www.macegroup.com/projects/stevenage-sg1>

around 77 hours to comply with and would place a significant burden on its resources.

Scope of the case

12. The complainant contacted the Commissioner on 20 May 2019 to complain about the way his request for information had been handled. He argued that as the scheme was expected to cost around £30 million of public money, and made provision for the building of new Council offices, disclosure of the requested information was in the public interest.
13. The analysis below considers whether the applicable access regime was the EIR or the FOIA. The Commissioner has then considered whether the Council was entitled to rely on regulation 12(4)(b) of the EIR to refuse to comply with the request.

Reasons for decision

Is the information environmental information?

14. Information is 'environmental information' and must be considered for disclosure under the terms of the EIR rather than the FOIA if it meets the definition set out in regulations 2(1)(a) to 2(1)(f) of the EIR.
15. The Commissioner considers that the information in this case can be classed as environmental information, as defined in regulation 2(1)(c) of the EIR. This says that any information on measures such as policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect the elements or factors of the environment listed in regulation 2(1)(a) and 2(1)(b) will be environmental information. One of the elements listed under 2(1)(a) is land.
16. The request in this case is for information concerning the redevelopment of land (on which Stevenage town centre is sited). The Commissioner considers that the request therefore relates to a measure as defined in regulation 2(1)(c) of the EIR which would or would be likely to, affect the elements described in 2(1)(a), namely land.
17. The Commissioner is therefore satisfied that the request was for environmental information, and that the request fell to be dealt with under the EIR.

Regulation 12(4)(b) – request is manifestly unreasonable

18. 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 because it is considered to be 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) on the grounds that to comply with it would impose a significant and disproportionate burden on the Council's resources, in terms of officer time and cost.
19. Regulation 12(4)(b) of the EIR is designed to protect public authorities from exposure to a disproportionate burden in terms of the amount of time and resources that a public authority has to expend in responding to a request. In effect, it is similar to section 12 of the FOIA, where the cost of complying with a request exceeds the appropriate limit.
20. Under the FOIA, the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') specify the appropriate limit for the amount of work required (£600 for central government departments, £450 for all other public authorities) beyond which a public authority is not obliged to comply with a request.
21. However, the EIR differ from the FOIA in that under the EIR there is no specific cost limit set for the amount of work required by a public authority to respond to a request.
22. While the Fees Regulations relate specifically to the FOIA, the Commissioner considers that they nevertheless provide a useful point of reference where the reason for citing regulation 12(4)(b) of the EIR is the time and costs that would be incurred in dealing with a request. However, the Fees Regulations are not the determining factor in assessing whether the exception applies.
23. The Fees Regulations provide that the costs associated with the activities involved in dealing with a request (determining whether the requested information is held; finding the information, or records containing the information; retrieving the information or records; and extracting the requested information from records) should be worked out at a standard rate of £25 per hour per person. For local authorities, the appropriate limit is set at £450, which is the equivalent of 18 hours work.
24. 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*" per se. The Commissioner considers that the term

"*manifestly*" means that there must be an obvious or clear quality to the identified unreasonableness.

25. The Commissioner's guidance on regulation 12(4)(b)² states that public authorities may be required to accept a greater burden in providing environmental information than other information.

26. 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:

- the 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) of the EIR; and
- the requirement to interpret the exception restrictively.

27. The Council explained to the complainant that the request would be costly to comply with because the Council held extensive information falling within its scope, across multiple business areas:

"The combined site areas are in excess of 14 acres, and comprise a number of existing sites and proposed character areas. The sites to be re-developed include: Swingate House & Car Park, Daneshill House, the existing bus station, Mecca Bingo, Town Square, the Plaza, Danestrete Clinic, Stevenage Library, the former police station and

² <https://ico.org.uk/media/for-organisations/documents/1615/manifestly-unreasonable-requests.pdf>

Southgate Health Clinic. The scale of this project provides some context as to why responding to a request relating to SG1 presents significant resource implications for the council.

Discussions between the council and Mace have involved a number of council teams, and staff both past and present. They have covered the negotiation of the contract and a wide range of issues including architecture and design, heritage and landscape considerations and land assembly."

28. The Council commented that the public has been kept informed via a series of public consultation events to highlight points covered by the SG1 project, and that it intends to continue to engage with the public in a similar fashion, as the project progresses.
29. The Council explained to the Commissioner that a total of 13 council officers (three lead and 10 additional) have been involved in the regeneration project and that they hold significant quantities of information. The estimated volume of documents that fall within scope of the request has been calculated by multiplying the known number of items held by one of the lead officers, by three, and estimating that the ten additional officers each hold 30% of the number of items held by the lead officers.

	Number of items	Minutes per item	Total time mins	Total time hours
Emails (3 lead officers)	660	3	1980	33 hours
Emails (wider team)	666	3	1998	33 hours
Attachments (lead officers)	40	5	200	3 hours 20 mins
Attachments (wider team)	20	5	100	1 hour 40 mins
Saved files (all teams)	50	5	250	4 hours 10 mins
Paper notebooks	4	30	120	2 hours
Total			4648	77 hours 10 mins

30. The Council explained

"The estimates are based on 3-5 minutes per email to recover, read and extract the email; attachments would take an additional 5-8 minutes for this process; saved files would take 5-8 minutes for this process. Paper notebooks would require 30-60 minutes for this process.

This is only for:

- 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.*

This does not include any time reviewing the information. The estimates given are for the quickest method to access the information and are based on the project lead sampling how long it would take to gather the information from the information he holds".

31. The Council stated that:

"The officer concerned has already spent a significant amount of time on this request to date and it is considered that further time would be manifestly unreasonable. It would seriously impact his and other team member's [sic] ability to progress work with the real possibility of delaying the project".

32. It said that any delay to the project:

"...could result in questions from Councillors and members of the public and could bring the council into disrepute, as well as seriously affect its ability to attract commercial interest in other major projects due to a loss of confidence and damage to its reputation".

33. It concluded that:

“The burden of fully responding to the request constitutes a diversion of resources away from the Council’s core business, which would have a proportionally detrimental impact on its provision of services to the public.”

34. The Commissioner considers the cost estimate provided to her by the Council to be cogent. She notes that even if the estimated time taken to consider the various elements was reduced by two thirds, the time required would still be significantly greater than the 18 hours set out in the Fees Regulations.

35. Even though the timescale for the request was reduced by the complainant to six months, the request remains wide ranging and relatively unfocussed in its scope. The Commissioner has published guidance on making requests for information³ which cautions requesters against making catch-all requests for “*all information held*”, because of the risk that they may incur significant costs which engage the costs provisions under the FOIA and EIR.

36. Turning to the value and purpose of the request, the Commissioner acknowledges the complainant’s points about the significant amount of public money involved and the fact that it will fund, in part, new Council offices. However, the Commissioner also notes that new Council offices are just one of the proposed public sector improvements covered by the project, and that the project has been subject to significant scrutiny. In particular, she notes from the Council’s website⁴ that its Local Plan was examined by the independent Planning Inspector in 2016 and then by the Secretary of State for Housing, Communities and Local Government, and that the SG1 project has since been given permission to proceed. She therefore considers that the Council’s plans have been subject to very high levels of scrutiny and oversight, and that, apparently, nothing untoward has been found about the proposals which calls into question their integrity.

37. The Council says that it has invited public engagement in the project via a series of public consultation events and that it will continue in this manner as the project progresses.

³ <https://ico.org.uk/your-data-matters/official-information/>

⁴ <http://www.stevenage.gov.uk/149690/planning-policy/191157/>

38. Having considered the volume of information in scope and the resultant time estimate, the Commissioner is of the view that significant resources would have to be diverted from core services for the Council to comply with the request. Assuming an average working day of seven hours, 30 minutes, 77 hours of work would take one person in excess of 10 working days to complete. This is an expense which the Council could not be expected to absorb without it affecting service provision in some way and it would therefore be manifestly unreasonable.
39. Furthermore, the Commissioner finds that the burden would be sufficiently excessive as to outweigh the other factors identified in the bullet points of paragraph 26.
40. Her decision is therefore that it would be manifestly unreasonable, on the grounds of cost, for the Council to comply with the request. In reaching this decision, the Commissioner has had regard for what is considered to be a reasonable time period under FOIA, being equivalent to 18 hours of work.
41. However, the Commissioner must now consider whether the public interest in maintaining the exception at regulation 12(4)(b) of the EIR is stronger than that in complying with the request.

Public interest

42. Regulation 12(4)(b) of the EIR is subject to a public interest test, as required by regulation 12(1)(b), and so the Commissioner must decide whether the public interest in maintaining the exception is stronger than that in complying with the request.

The public interest in the information being disclosed

43. The complainant argued that the involvement of large sums of public money in a project which would partly benefit the Council (via the provision of new offices), meant that disclosure of information about it was in the public interest.
44. The Council acknowledged the public interest in it being accountable and transparent with regard to decision making, particularly in relation to the spending of public money and obtaining value for money.

The public interest in the exception being maintained

45. In favour of maintaining the exception, the Council referred the Commissioner to the considerable burden that would be imposed on it, which it said would result in the diversion of resources away from the Council's core business, and would have a proportionally detrimental impact on its provision of services to the public.

46. Furthermore, in terms of keeping the public informed about the project, the Council maintains that:

"There have been a significant number of consultation events and public meetings to which the requestor has been able to attend. These are held by SBC to highlight the principles that are included in the SG1 scheme and to seek views from residents. There will be further public engagement events at all stages of the scheme."

Balance of the public interest

47. The Commissioner recognises the importance of accountability and transparency with regard to decision-making by public authorities (particularly involving the spending of public money), 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 case, the Commissioner must assess whether the cost of compliance is proportionate to the value of the request.
48. The Commissioner appreciates that there will be local interest about the development, particularly in view of the costs involved and the fact that some of the redevelopment will deliver new Council offices. It is therefore reasonable to conclude that there will be some public discussion about the development and that the disclosure of relevant information may therefore increase public understanding of the Council's decision making process.
49. However, the Commissioner notes that the project has been subject to a very high level of scrutiny, and has nevertheless been cleared to continue. She considers the public interest in the independent scrutiny and oversight of the Council's spending plans to have been served to a significant degree by this. While the general public interest in openness and transparency would be served if disclosure could be achieved readily and at proportionate cost, the Council has demonstrated that it would instead be a disproportionate, costly and time consuming action, which would divert available resources away from other services.
50. Whilst the Commissioner accepts the purpose and value of the request, she nevertheless considers the burden imposed by the request to be manifestly excessive and that it would impact on other services. It is, therefore, the Commissioner's decision that the public interest lies in maintaining the exception.

Presumption in favour of disclosure

51. Regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions. As stated in the Upper Tribunal decision *Vesco v Information Commissioner (SGIA/44/2019)*, *"If application of the first two stages has not resulted in disclosure, a public authority should go on to consider the presumption in favour of disclosure..."* and *"the presumption serves two purposes: (1) to provide the default position in the event that the interests are equally balanced and (2) to inform any decision that may be taken under the regulations"* (paragraph 19).
52. As covered above, in this case the Commissioner's view is that the balance of the public interests favours the maintenance of the exception, rather than being equally balanced. This means that the Commissioner's decision, whilst informed by the presumption provided for in regulation 12(2), is that the exception provided by regulation 12(4)(b) was applied correctly.

Regulation 9 – Advice and assistance

53. Regulation 9(1) of the EIR provides that:

"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."

54. This regulation places a duty on a public authority to provide advice and assistance to someone making a request. The Commissioner considers that this includes assisting an applicant to refine a request if it is deemed that answering a request would otherwise incur an unreasonable cost.
55. The Commissioner is aware that the Council invited the complainant to limit the scope of the request prior to its initial response. The Commissioner also notes that the complainant has subsequently made a related request, for a specific item of information, which the Council has dealt with as a separate request.
56. The Commissioner is therefore satisfied that the Council has complied with the requirements of regulation 9(1) of the EIR.

Right of appeal

57. 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

58. 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.
59. 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

Samantha Bracegirdle
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