

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

**Decision notice**

**Date:** 8 December 2020

**Public Authority:** Wiltshire Council  
**Address:** County Hall  
Bythesea Road  
Trowbridge  
Wiltshire  
BA14 8JN

**Decision (including any steps ordered)**

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1. The complainant has requested from Wiltshire Council (the Council) information in relation to two planning applications. 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 refuse the request under regulation 12(4)(b) of the EIR and that the public interest favoured maintaining the exception.
3. The Commissioner requires no steps to be taken as a result of this decision notice.

**Request and response**

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4. On 17 March 2020 the complainant wrote to the Council requesting information of the following description:

*"I request copies of all maps, forms, documents, emails, notes of conversations, etc. relating to the Town and Village Green applications*

*of Stanton St. Quintin Parish Council for an area of land in Lower Stanton St. Quintin.*

*I believe the application numbers are 2018/01 and 2019/01 but there could be others so your search should not be restricted to just these numbers but should also include any other related applications."*

5. On 24 March 2020 the Council asked the complainant to clarify which documents he had already received, in order to prevent sending duplicate documents to him.
6. On the same day the complainant responded, informing the Council about the files he previously obtained. He also added: *"I would presume these forms have been added to since 17/6/19 so I would think it best if I was sent new complete copies of the current forms and attachments. The maps were incorrect in the previous files anyway."*
7. On 9 April 2020, the Council responded. It stated that, as the information requested was environmental, it had decided to handle the information request under the EIR access regime. Further, the Council stated that it was refusing to provide him with the information requested, citing the exception provided by regulation 12(4)(b) (manifestly unreasonable), as the basis of this refusal. The Council asserted that complying with the complainant's request would incur unreasonable costs or unreasonable diversion of its resources.
8. Remaining dissatisfied with the response received, on 9 April 2020 the complainant wrote to the Council, requesting an internal review.
9. The Council sent the outcome of its internal review to the complainant on 1 May 2020. The Council provided him with additional clarification in relation to the exception applied in its initial response. However, it did not change its position regarding the application of regulation 12(4)(b) of the EIR.

## **Scope of the case**

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10. The complainant contacted the Commissioner 10 May 2020 to complain about the way his request for information had been handled.
11. The analysis below considers whether the Council correctly relied on regulation 12(4)(b) of the EIR to refuse to provide the information requested, maintaining that it would incur an unreasonable level of costs, or an unreasonable diversion of resources.

## Reasons for decision

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### Is the information environmental information?

12. 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.
13. 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 regulation provides 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.
14. The request in this case is for information concerning the redevelopment of land. 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.
15. 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

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. 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.
17. 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 FOIA, where the cost of complying with a request exceeds the appropriate limit.
18. Under 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.

19. However, the EIR differ from 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.
20. While the Fees Regulations relate specifically to 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.
21. 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.
22. 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.
23. The Commissioner's guidance on regulation 12(4)(b)<sup>1</sup> states that public authorities may be required to accept a greater burden in providing environmental information than other information.
24. 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

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1615/manifestly-unreasonable-requests.pdf>

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.

25. The Council responded to the Commissioner's enquiries by sending her its arguments in support of its position.
26. The Council initially explained that it was estimated that in order to respond to the complainant's request it would have to review more than 200 emails and many hard copy documents which were considered to contain information within the scope of the request.
27. The Council asserted that in addition to the electronically held information, based on the complainant's formulation of his request, it was likely that it would hold information in hard copy. Taking into account the circumstances caused by the pandemic outbreak, at the time of the request the Council staff were working almost exclusively from home. Therefore, it was impossible to review relevant physical files in order to establish whether they could be disclosed.
28. The Council stated that upon receiving the complainant's request *"the Service area with responsibility for village green applications, conducted searches for the requested information. The Service area spent some 14 hours in preparing 80 separate electronic documents for disclosure. The Service conservatively estimated that it would take at least another 23 hours to complete the required work on the remaining electronically held records."*
29. The Council maintained that in order to ensure that all the relevant information was located, it had to inspect individually each of the 200 emails that had been identified as possibly containing the requested information. It stated that *"There is no alternative to searching each email individually as, from the earlier sample it was found, that most*

*emails have several attachments which also have to be inspected to determine whether the contents fall within the request."*

30. The Council asserted that the estimated cost for fulfilling this request *"would be more than double the cost limit of £450"*. It concluded that it decided to refuse the present request considering that *"it would be unreasonable for the council to be expected to divert its resources at any time, let alone during a global health emergency, to search through hundreds of emails and paper documents to satisfy a request like this"*.
31. Having considered the Council's response, its arguments and the explanations provided in respect of how the relevant information is recorded and maintained, as well as the actions it undertook to address the request in this case, the Commissioner is of the view that complying the complainant's request would incur excessive costs.
32. In addition, the Commissioner considers that significant resources would be diverted from core services to fulfil the request in the present circumstances. She believes that complying with the complainant's information request would impose an unreasonable burden to the Council. Therefore, the Commissioner's conclusion is that regulation 12(4)(b) is engaged in this case.
33. Following the above, the Commissioner has gone on to consider public interest factors relevant to the information request in question.

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

34. 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.
35. 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.
36. 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***

37. 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. This, in turn, would increase the possibility for members of the public to participate in processes that would potentially have an impact in their lives and well-being.

38. The Council also recognised that there is an inherent public interest in environmental matters. It accepted that greater public awareness and understanding of environmental matters contributes to a more informed public debate and holds public authorities to account for decisions taken. The Council added that *"There is always positive public interest in disclosure to promote transparency and accountability of the council."*
39. The Council explained that *"the application forms and other limited information relating to this application have been made publicly available under the Commons Regulation Act 1965 following formal acceptance of the application."*

#### *Public interest in favour of maintaining the exception*

40. However, the Council asserted that it considered that the public interest in maintaining the exception provided under regulation 12(4)(b) lies in protecting the Council's resources from exposure to disproportionate burden and an unjustified level of disruption in exercising its daily activities.
41. The Council stated that to conduct the searches required *"would place a disproportionate burden on officers' time and cause significant disruption to officers' daily workload, resulting in the delay to other similar applications and other matters attended to by the Service area which holds the information. This would not be conducive to the efficient running of a public service."*
42. The Council is of the opinion that there would be no public interest in diverting its resources from other activities it is required to provide in order to retrieve the information requested. The Council added *"Indeed, in the current climate of budget cuts and the ongoing health pandemic it is in the public interest for the council to reduce costs and make the most efficient use of its limited resources."*

#### *Balance of the public interest*

43. 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.

44. The Commissioner appreciates that there will be public interest about the subject matter of the request, particularly in respect to the usage of environmental resources available for members of the public. It is therefore reasonable to conclude that there will be some public discussion about the development and that the disclosure of relevant information may increase public understanding of the Council's decision making process. The Commissioner is aware that the Council has already put some information into the public domain which goes some way to meeting the public interest in disclosure.
45. The Commissioner's position, in the current circumstances, 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. The Commissioner, therefore, considers that dealing with the request does not best serve the public interest.
46. 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, in the current circumstances. It is, therefore, the Commissioner's decision that the public interest lies in maintaining the exception.

### **Presumption in favour of disclosure**

47. 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).
48. 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 – Duty to advise and assist**

49. Regulation 9(1) of the EIR states 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."*

50. When a request is refused because it is burdensome and thus manifestly unreasonable, the Commissioner considers that the public authority should provide the requestor with advice and assistance such that the request can be refined to bring it within a reasonable cost.
51. The Council stated that when it replied to the complainant's request, it suggested that if he were to resubmit the request for information with a narrower scope, it might make it more manageable for the Council to deal with it.
52. In its response to the Commissioner's inquiries, the Council stated that *"In hindsight we could have explained in more depth that it was not possible to attend our offices to inspect the physical files due to the pandemic but that we most likely would have been able to provide electronic information excluding the emails."* Nevertheless, the complainant chose not to refine this request.
53. The Commissioner notes that in its response to the complainant, the officer responsible from the Council stated *"My main suggestion would be to remove the email element of your request. We could focus our work on maps, forms and documents which may make the request manageable. This would be in effect honing the searches to what is held as part of the 'main files' of information held."*
54. In light of the above, the Commissioner has concluded that the Council complied with regulation 9 of the EIR in its response to this request for information.

## Right of appeal

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55. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

56. 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.
57. 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**  
**Wilmslow**  
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**SK9 5AF**