

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 16 March 2020

**Public Authority:** Wiltshire Council

**Address:** County Hall  
Bythesea Road  
Towbridge  
Wiltshire  
BA14 8JN

#### **Decision (including any steps ordered)**

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1. The complainant has requested information with regards to the insulating and re-waterproofing of roofing. Wiltshire Council (the council) refused the request under regulation 12(4)(b) of the EIR as it considered it to be manifestly unreasonable.
2. The Commissioner's decision is that regulation 12(4)(b) of the EIR is not engaged
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Issue a fresh response to the complainant under the EIR without relying on regulation 12(4)(b) of the EIR.
4. The public authority 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.

## Request and response

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5. On 13 June 2019 the complainant made the following request to the council:

*"Please would you find out what funding was given to the council to help fund or part fund the insulation of the roofs and or the major works to re-waterproof them.*

*I know they had £30 million back to 2004 to spend on improving housing stock. Plus I have a document showing that insulation was a priority in 2006."*

6. The council responded on the 5 July 2019 refusing the request under regulation 12(4)(b) of the EIR as it considered the request was manifestly unreasonable.
7. The complainant requested an internal review on the 10 July 2019 which the council carried out on the 30 July 2019 upholding its initial response.

## Scope of the case

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8. The complainant contacted the Commissioner on 30 July 2019 dissatisfied with the council refusing her request.
9. The Commissioner considers the scope of the request is to determine whether the council can rely on regulation 12(4)(b) of the EIR to refuse the request.

## Reasons for decision

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### Regulation 12(4)(b) of the EIR – Manifestly Unreasonable

10. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose environmental information to the extent that the request for information is manifestly unreasonable. There is no definition of 'manifestly unreasonable' under the EIR, but the Commissioner's opinion is that 'manifestly' implies that a request should be obviously or clearly unreasonable for a public authority to respond to in any other way than applying this exception
11. The Commissioner recognises that, on occasion, there is no material difference between a request that is vexatious under section 14(1) of the Freedom of Information Act 2000 (the FOIA) and a request that is

manifestly unreasonable on vexatious grounds under the EIR. The Commissioner has therefore considered the extent to which the request could be considered vexatious.

12. The term 'vexatious' is not defined in the legislation. In *Information Commissioner vs Devon County Council and Dransfield*<sup>1</sup> the Upper Tribunal took the view that the ordinary dictionary definition of the word is only of limited use, because the question of whether a request is vexatious ultimately depends upon the circumstances surrounding that request. The Tribunal concluded that 'vexatious' could be defined as "...manifestly unjustified, inappropriate or improper use of a formal procedure" (paragraph 27). This clearly established that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.

13. In the Dransfield case, the Upper Tribunal stressed the

*"importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not. Emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests"* (paragraph 45).

14. In this case the council has told the Commissioner that although this request has been refused on the grounds of it being vexatious, cost and impact on resources are also relevant in this case.

15. The council has explained to the Commissioner that in order to fully understand its position, it is necessary to set out the complainant's dealings with the council since April 2018.

16. The council has advised that in April 2018 the complainant entered into correspondence with the council about repairs to her home, of which she is the leaseholder and the council is the freeholder.

17. This contact resulted in the complainant making two formal complaints to the council which both went through stage 1 and 2 of the complaints process with a final response being given in 2018. The council state that the complainant was not satisfied with the council's final response and so took her complaint to the Housing Ombudsman who, in September

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<sup>1</sup> <https://www.judiciary.uk/judgments/info-commissioner-devon-county-council-tribunal-decision-07022013/>

2018, declined to investigate her case as it did not fall under their jurisdiction.

18. The complainant has also set out her concerns to the Commissioner about the works carried out on her property. This work has a direct impact on herself.
19. The council has informed the Commissioner that the Housing Ombudsman had received a further complaint about the council in September 2019, which is an ongoing investigation.
20. The council has told the Commissioner that the complainant began to submit a series of requests for information seeking information to support her complaints to the council and Ombudsman about repairs to her housing. Submitting 11 requests for information and requesting one internal review to a response given.
21. These requests began on the 30 August 2018, with the last being this request made on 13 June 2019 that has been refused under regulation 12(4)(b) of the EIR.
22. The council has told the Commissioner that her first request contained three questions. Its response advised that no information was held to the two of the questions and the other was refused as it would exceed the appropriate limit to provide the information (section 12 of the FOIA).
23. This request was followed with the second request on the same subject and all of the information was supplied.
24. Then the complainant made a series of four requests, two on the 24 September 2018, one on the 25 September 2018 and one on the 26 September 2018. The wording of the 26 September 2018 request was the same as the first of these four requests.
25. The council says it provided the information it held with regards to the first of these four requests and refused to process the remaining three requests as it determined the aggregate costs of processing the remaining requests would exceed the appropriate limit.
26. The council acknowledges that these requests should have been responded to under the EIR not the FOIA, however it says that the overall response outcome would have been the same. Although considerations were made at the time as to whether the complainant's requests were now vexatious, but as there was active contact between the complainant, Housing Department and the Complainants Team it was decided that this would not be appropriate as the council were trying to assist her with the issues she was raising.

27. The complainant made her seventh request in January 2019 and the council has told the Commissioner that despite the complainant having been informed during the processing of her previous request that the council is not able to retrieve multiple years of information, this seventh request asked for information over the previous 20 years. The council state that this request was refused as manifestly unreasonable on the grounds of costs and disruption to the council's operations.
28. The eighth request, made in February 2019, the council says resulted in it providing all the information it held falling within the scope of the request.
29. In March 2019, the council says the complainant then made a further request for broadly similar information to her previous requests and it was at this point the council took the decision to apply regulation 12(4)(b) of the EIR stating to her in its response:

*"We are aware that you are in contact with the Housing service area and have advised you previously that you should point all your enquiries to them as they may be able to assist better.*

*Wiltshire Council believes your requests ask for substantially similar or repeated information, and since 31 July 2018, you have submitted 8 requests; each one relating to roof repairs in the Friary Estate."*

30. The council has told the Commissioner that despite this explanation, the complainant submitted the 13 June 2019 request which has been refused under regulation 12(4)(b) of the EIR and is being considered in this decision notice.
31. The Commissioner notes that this is a total of 10 requests, not 11 stated by the council. Regardless, the complainant has averaged just over one request a month over the 9 and a half months from end of August 2018 to mid-June 2019.
32. The council has explained to the Commissioner, with regards to the detrimental impact of complying with the first request, that during the processing of this first request it was found that a large proportion of the requested information is stored as paper documents in its off site storage. Due to this a number of boxes (not specified) would have to be retrieved at a cost of £0.67 per box. Each box would then have to be searched manually to identify the requested information and returned to off site storage at a cost of £1.46 per box.
33. Which is why the council states it refused that request on the ground of costs.

34. With regards to the fourth request the council concluded it would be an unacceptable cost to provide the information as it estimated it would take 56.5 hours to provide the information to that request.
35. With regards to these two previous requests, the Commissioner can see how providing the information would have a substantial impact on the council's resources. However, the council did not provide the information, it refused these requests and so would not have spent the estimated time gathering this information. So the impact in refusing these two request would be significantly less than what is described, because the council did not carry out the work to provide the information.
36. No breakdown of the time it could take to provide the information to the request being considered in this decision notice has been provided for consideration.
37. The council has stated to the Commissioner that the focus of the complainant's requests, complaints and correspondence is the subject of repairs to the flat that she lives in and despite being informed on several occasions that the council either does not hold or can not reasonably locate and retrieve the information she is seeking, she has continued to submit requests which either repeat her previous requests or were substantially similar to her previous requests.
38. The Commissioner has not been provided with copies or summaries of these previous requests, and so is unable to determine whether the complainant's 13 June request is a repeat or substantially similar request to any of her previous requests.
39. The council has told the Commissioner that whilst making these requests the Housing Department was dealing directly with the complainant and the following extracts are from the Housing Department during the processing of the complainant's seventh request:
  - Head of Housing: *"I am aware who this client is and she has sent our director and other staff hundreds of emails so legal advice is now being sought due to the significant amount of time it is taking to manage her requests."*
  - Director of Housing: *"If the person in question is using FOI as well emailing direct it will become unmanageable."*
40. The council state that based on the above, it maintains its application of regulation 12(4)(b) of the EIR,

41. The complainant has told the Commissioner she is only after the figure for the amount of funding the council has received for the insulation and re-water-proofing of the roofs.
42. She has also advised the Commissioner that she has to pay for the works carried out on the property she lives and that there are other residents who are waiting to see the outcome of her case as the issues with insulation and weather proofing affect them too.
43. The Commissioner can see why the complainant would be contacting the council about these issues if she is having to pay for the repairs that have been undertaken. As it is these issues that she is concerned about, naturally the requests would focus on these issues.
44. The complainant has gone through two complaint processes with the council, and the Commissioner would expect that this would by its nature cause a volume of correspondence. The complainant does not agree with the outcomes, and has the right to take this further.
45. There is currently a live Ombudsman investigation with no outcome as of yet, and the complainant has been told she needs to apply to the First- tier Tribunal about her 2018 Ombudsman outcome. She has told the Commissioner she needs the information requested to use as evidence to submit it to the Tribunal.
46. The Commissioner recognises that disputes can span a long timeframe, and this causes correspondence to be generated. There is no specific cut off for all cases, each case needs to be considered on its own merits.
47. The Commissioner guidance<sup>2</sup> on regulation 12(4)(b) also states, at paragraph 21,:  
  

*"It should be noted that public authorities may be required to accept a greater burden in providing environmental information than other information."*
48. The Commissioner does not consider the council has, in this case, sufficiently demonstrated or evidenced the volume of work it has had to carry out in order to deem this request manifestly unreasonable.

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

49. The Commissioner has not, in this case, been convinced that this request is a manifestly unjustified, inappropriate or improper use of the EIR.
50. And although the council has demonstrated why two previous requests could potentially be considered manifestly unreasonable, due to costs. The evidence as to why the complainant's 13 June 2019 request is too costly to respond has not, in the Commissioner's view, been shown to be disproportionate.
51. On consideration of the above, the Commissioner finds that regulation 12(4)(b) of the EIR is not engaged to this request.



## 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@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)

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 .....**

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**