

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

Date: 24 August 2021

Public Authority: Derbyshire County Council
Address: County Hall
Smedley Street
Matlock
Derbyshire
DE4 3AG

Decision (including any steps ordered)

1. The complainant has made a request to Derbyshire County Council for recorded information regarding a Traffic Regulation Order ("TRO"), being the original map from Schedule 2 of that TRO.
2. The Commissioner's decision is that the council is entitled to rely on Regulation 12(4)(b) of the EIR as the basis for not complying with the complainant's request. The Commissioner considers the complainant's request to be manifestly unreasonable on the grounds that complying with it would far exceed the appropriate limit. Furthermore the Commissioner is satisfied that the council is not withholding any other information that is in scope of the request.
3. The Commissioner does not require any steps.

Request and response

4. On 18 June 2020 the complaint requested information from Derbyshire County Council ("the council") in the following terms:

"I refer to your 2016 TRO Consolidation Order and the section "Schedule 2 the map" which is not available "on line " and therefore request a copy of that document and quote from that section of the consolidation order.

The map comprises "all those plans" containing particulars of traffic restrictions which are contained within the annexure hereto entitled "On-street parking, Waiting and Loading Prohibitions and Restrictions, Consolidation Order".

If more specific information is required then please inform me, although I am sure it should be "on file" and easily accessible"

5. The council responded on 25 June 2020 and requested further clarification, stating that to provide the whole of the map at Schedule 2 would take several officer days and exceed cost limits. The council asked the complainant:

"To enable me to provide you with as much information as possible could you please let me know if there is a particular area, or areas, that would be of most interest to you. If so could you let me have as much information as possible, which would help identify the areas required. I can then arrange for these parts of the document to be provided."

6. The complaint responded on 26 June 2020 and provided the following clarification:

"The map is that which was within (part of) the consolidation order but removed when the Council was informed by me that it did not conform what they claimed within the area of CPE. It is the DIGITAL MAP of the County which under the 2004 TMA is a requirement for third party operators of CPE and anyone within Council transport is aware of the map which is being suppressed for obvious reasons."

7. The council responded on 13 July 2020. It refused on the basis of cost, but did not cite an exemption, however it explained as follows:

- The full copy of the map is held in the GIS Computer Mapping Software known as ParkMap. There are 5 registrations, available only to council officers to access the software.

- The council can provide copies of specific streets. However to provide the whole of the map would be in excess of 10,000 map tiles, needing to be printed off at A3 to a scale of 1:1250. This would require several days of officer time and some expenditure on materials.
 - A portal to view ParkMap is being developed. This will provide access, on the council website, to maps with the waiting restrictions across Derbyshire.
8. The complainant requested an internal review on 14 July 2020.
9. The council provided the outcome of an internal review on 16 September 2020. It clarified its original position, stating that the information is withheld on the basis of EIR 12(4)(b) (manifestly unreasonable on cost grounds). By way of advice and assistance, the council advised that information could be provided if the scope was reduced to a smaller area. Furthermore it stated that the online portal view of ParkMap was due to go live to the general public within a month.
10. The council contacted the complainant on 16 October 2020 to advise that the online portal to ParkMap (called Traffweb) was now available via their website. It provided a link to Traffweb.

Scope of the case

11. The complainant contacted the Commissioner on 16 September 2021 to complain about the way his request for information had been handled. The complainant is dissatisfied that the council's response is regarding a computer generated map, which he states was created latterly, and not the original map from 2016, when the Traffic Regulation Order ("the TRO") came into effect. Furthermore the complainant disputes that the council is entitled to rely on regulation 12(4)(b) to withhold a copy of the 2016 map.
12. The following analysis covers whether regulation 12(4)(b) was cited correctly.

Reasons for decision

Regulation 12(4)(b)

13. Regulation of the EIR 12(4)(b) provides that

"(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;"

14. The council's position is that the request is manifestly unreasonable because of the disproportionate burden it would impose on staffing resources and budgets.
15. Regulation 12(4)(b) of the EIR is designed to protect public authorities from exposure to a disproportionate burden or an unjustified level of distress, disruption or irritation in handling information requests. In effect, it works similarly to two exemptions within the Freedom of Information Act 2000 ("FOIA"): section 12, where the cost of complying with a request exceeds the appropriate limit and section 14, where a request is vexatious.
16. The EIR differ from the 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.
17. Specifically, the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004¹ ("the Fees Regulations") which apply in relation to section 12 of the FOIA are not directly relevant to the EIR because the cost limit and hourly rate set by the Fees Regulations do not apply in relation to environmental information. 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.
18. The Fees Regulations confirm that the costs associated with these activities 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.
19. The Commissioner is satisfied that regulation 12(4)(b) sets a fairly 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

¹ [The Freedom of Information and Data Protection \(Appropriate Limit and Fees\) Regulations 2004 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

Commissioner considers that the term “manifestly” means that there must be an obvious or clear quality to the identified unreasonableness.

20. It should also be noted that public authorities may be required to accept a greater burden in providing environmental information than other information.

21. Therefore, in assessing whether the cost or burden of dealing with a request is clearly or obviously unreasonable, the Commissioner will take the following factors into account:

- 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 exceptions restrictively

The council’s position

22. The information in scope of the request is an electronic file which is too large to send by email.

23. The council advised that to print a copy of the file would be equivalent to printing the whole of Google maps for Derbyshire, showing every street and area.

24. The council states this has been explained on numerous occasions to the complainant including by phone. They have also invited the complainant to visit County Hall and view the map in person, at which time an officer would print out the particular areas of interest.

25. The council states that it is difficult to provide the costs in providing files or printed copies of the information, but it made the following estimation:

- The map contains 10,000 map tiles which would need to be downloaded individually as files in PDF format and then emailed to the council's print service to print at A3 size.
 - The council considers that five minutes per tile is a conservative estimate of time to find and save each of the 10,000 files, which equates to approximately 830 hours work.
 - The cost per map to print is £0.19 which equates to £1,900.
 - Further postage costs would be incurred which have not been estimated.
26. The council considers that the time and cost represent an unreasonable burden and diversion of resources from delivering mainstream services and answering other requests. It stated: *"This strain has been particularly onerous when officers have worked extremely hard to respond to urgent tasks relating to the pandemic."*
27. The council states that at the time of the request, its resources were diverted to urgent Covid-19 work, such as considering street lay-outs to provide for social distancing.
28. The council considers that it has offered reasonable alternatives in terms of providing a map for particular areas, or arranging a viewing at the council offices. Furthermore in its responses and the internal review in September 2020, it had advised of the forthcoming launch of the Traffweb portal, which then became available on 16 October 2020.
29. By way of giving some context to this request the council advised that the complainant has made in excess of 100 requests for information regarding similar subject matters such as lay-bys and restrictions, a particular road and lay-by, penalty notices, and TROs. The volume of internal reviews has been particularly onerous on their legal services department, which has needed to divert resources from dealing with the council's response to the pandemic.
30. The council states that the requests are worded in many different ways but relate to a disagreement with partial parking restrictions that have been made in an area on a particular A-road.
31. The council advised that the tone of the complainant's emails is often distressing to officers being passive aggressive and accusatory in nature. Many officers have been accused by the complainant of committing perjury, or not understanding of the regulations that they work with.

The complainant's position

32. As noted above at paragraph 11, the complainant believed that the Council had failed to assess his request in relation to the correct information. The Council provided an explanation of the information it held at the time of the request that was within its scope, notably that the map in question has been held in digitised form since 2009.
33. In the absence of evidence otherwise, the Commissioner accepts that what the council has described represents the steps that it would be necessary for it to take to comply with the complainant's request. The Commissioner does not, therefore, find the complainant's reasoning relating to the format he believes the requested information was held in to be a persuasive argument against regulation 12(4)(b) being engaged.

Is the exception engaged?

34. The Commissioner has considered the council's application of regulation 12(4)(b) to the complainant's request. She has decided that it would require the council to spend a significant and disproportionate cost and effort in order to comply. The council's explanations are sufficiently detailed for the Commissioner to determine that the request is manifestly unreasonable.
35. In making this determination, the Commissioner has considered the council's offer to provide maps for a reduced area, or to provide officer time with the complainant to access its Parkmap system and print specific areas. The Commissioner considers that these are reasonable alternatives which satisfy the requirement of Regulation 9 of the EIR, to provide requesters with advice and assistance.
36. In making this decision, the Commissioner has not considered whether the complainant's requests are vexatious. It is a decision made solely on the grounds that the request is manifestly unreasonable, requiring the council to spend a disproportionate amount of time and resources to comply with them.

Public interest

37. Regulation 12(4)(b) provides a qualified exception, therefore a public authority may only refuse a request that is manifestly unreasonable if the public interest in maintaining that exception outweighs the public interest in disclosure. Regulation 12(2) of the EIR also provides that the public authority must apply an explicit presumption in favour of disclosure. This means that exempt information must still be disclosed if the balance of the public interests does not favour maintaining any exceptions applied.

Public interest in favour of disclosure

38. The complainant asserts that the council has provided incorrect and misleading information, including in its representations at Traffic Penalty Tribunals.
39. The Commissioner has no basis nor evidence to support that such accusations are true. She has instead taken into account the general public interest in transparency.

The public interest in the exception being maintained

40. The council referred the Commissioner to the considerable burden that would be imposed on it in answering the request, already described above. It said this would result in the diversion of resources away from other work and would have a detrimental impact on its provision of services to the public.
41. The council advised that at the time of the request, its resources were already under an increased burden in dealing with the pandemic to enable compliance with the Government's guidelines and to ensure public safety.
42. The council therefore considers that the public interest in maintaining the exception lay in protecting officers from exposure to a disproportionate burden and unjustified level of distress, disruption or irritation in handling onerous and repeated information requests.
43. It states that dealing with such manifestly unreasonable requests, places an enormous strain on resources and stops the council from delivering mainstream services and answering other requests.
44. The council explained that the strain has been particularly onerous in a period when its officers have worked extremely hard to respond to urgent tasks relating to the pandemic

Balance of the public interest

45. The Commissioner recognises the importance of accountability and transparency with regard to decision-making by public authorities and the necessity of a public authority in bearing some costs when complying with requests for information.
46. However, in considering the public interest test for this case, the Commissioner must assess whether the cost of compliance to, and impact on, the council is proportionate to the value of the request.
47. The Commissioner has seen no evidence that there is a genuine public interest in there being a full copy of the schedule 2 map, which is a

detailed map of Derbyshire county at street level, being available in either printed form or PDF file format.

48. The Commissioner considers that in this case, the public interest in transparency can be served by the alternative arrangements that were offered to the complainant by the council.
49. The Commissioner considers that the burden that would be imposed by compliance with the request to be manifestly excessive to the extent that it would impact on other services.
50. 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 interest 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.

Right of appeal

53. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

54. 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.
55. 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

Janet Wyles
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