

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 19 July 2022

Public Authority: Buckinghamshire Council
Address: The Gateway
Gatehouse Road
Aylesbury
HP19 8FF

Decision (including any steps ordered)

1. The complainant requested information from Buckinghamshire Council ("the Council") relating to companies, consultancies, advisors and individuals used by the Council to provide services when compiling the Chiltern and South Bucks draft local plan. The Council refused to provide some of the requested information citing regulation 12(4)(b) (manifestly unreasonable request) of the EIR.
2. The Commissioner's decision is that the Council was entitled to rely on regulation 12(4)(b) to refuse to provide the withheld information.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 10 May 2021, the complainant wrote to the Council and requested information in the following terms:

"Please list the private sector companies, consultancies, advisors and individuals which were used to provide services when compiling the Chiltern & South Bucks Draft Local Plan and list the total amount paid to each one."

5. The Council responded on 1 June 2021 and refused to provide the requested information citing regulation 12(4)(b) (manifestly unreasonable) of the EIR as its basis for doing so.
6. On 5 June 2021, the complainant wrote to the Council and requested an internal review.
7. Following an internal review the Council wrote to the complainant on 27 July 2021. It maintained its reliance on regulation 12(4)(b) of the EIR.

Scope of the case

8. The complainant contacted the Commissioner 2 August 2021 to complain about the way their request for information had been handled.
9. During the course of the Commissioner's investigation the Council revised its position. The Council wrote to the complainant on 28 June 2022 and provided some information within the scope of the request. Specifically, the Council provided the complainant with a list of companies and individuals which the Council used to provide services when compiling the Chiltern and South Bucks draft plan.
10. However, the Council refused to provide information relating to the amount paid to the companies and individuals for their services. It cited regulation 12(4)(b) of the EIR as its basis for doing so.
11. The scope of this case and the following analysis is to determine if the Council is entitled to rely on regulation 12(4)(b) of the EIR to refuse to provide the withheld information.

Reasons for decision

Regulation 12(4)(b) – manifestly unreasonable

12. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable.
13. The Commissioner considers that a request can be manifestly unreasonable either if the request is vexatious, or where compliance with the request would incur a manifestly unreasonable burden on the public authority both in terms of costs and the diversion of resources.
14. In its submissions to the Commissioner, the Council has relied upon the latter interpretation of regulation 12(4)(b); that it considers the amount

of work required to comply with this request in full would bring about a manifestly unreasonable burden.

15. Under FOIA, the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') specify an upper limit for the amount of work required beyond which a public authority is not obliged to comply with a request. This is set at £450 for public authorities such as the Council.
16. The Fees Regulations state that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it;
 - and extracting the information from a document containing it.
17. The EIR differ from FOIA in that under the EIR there is no upper cost limit set for the amount of work required by a public authority to respond to a request.
18. While the Fees Regulations relate specifically to FOIA, the Commissioner considers that they provide a useful point of reference where the reason for citing regulation 12(4)(b) of the EIR is the time and costs that compliance with a request would expend. However, the Fees Regulations are not the determining factor in assessing whether the exception applies.
19. The Commissioner's guidance on regulation 12(4)(b)¹ states that public authorities may be required to accept a greater burden in providing environmental information than other information.
20. Regulation 12(4)(b) sets a robust test for a public 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". The Commissioner considers that the term "manifestly" means that there must be an obvious or clear quality to the identified unreasonableness.

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

21. Given the high burden referred to above, the Commissioner expects a public authority to provide both a detailed explanation and quantifiable evidence to justify why complying with a request would impose such an unreasonable burden on it, and therefore why regulation 12(4)(b) is engaged.
22. Where a public authority has shown that Regulation 12(4)(b) is engaged, Regulation 12(1)(b) requires that a public interest test is carried out to determine whether the arguments in favour of maintaining the exception outweigh those in favour of disclosing the requested information. A public authority may still be required to comply with a manifestly unreasonable request if there is a strong public value in doing so.

The Council's position

23. As is the practice in a case in which the public authority has cited regulation 12(4)(b) of the EIR, the Commissioner asked the Council to provide a detailed explanation of its estimate of the time and cost of providing the withheld information.
24. In its submissions to the Commissioner, the Council explained that the withheld information is mainly held on the Council's legacy system. This system contains information which was formerly held by Chiltern District Council and South Buckinghamshire District Council before the Councils merged to form Buckinghamshire Council. The Council stated that some information is also held on the Council's own system.
25. The Council explained that it is unable to extract the withheld information directly from the legacy system and therefore, in order to provide the information, it would have to manually copy any information which may fall within the scope of the request from the legacy system into a spreadsheet before it could be reviewed.
26. The Council explained that it would have to manually review all the information which may fall within the scope of the request to identify purchase orders which relate to companies that provided services when compiling the Chiltern and South Bucks draft local plan. It would then have to determine whether the purchase orders relate to the Chiltern and South Bucks draft plan and extract the requested information from those purchase orders.
27. For each of the 19 companies and individuals that provided services when the Chiltern and South Bucks draft plan was compiled, the Council estimated that it would take approximately 720 minutes to locate, retrieve and extract the withheld information from purchase orders ((10 minutes x 12 months = 120 minutes) x 6 years = 12 hours). Therefore,

the Council calculated that in total it would take 228 hours to provide the withheld information (720 minutes x 19 companies and individuals = 228 hours).

The Commissioner's position

28. The Commissioner considers the Council's estimate of 228 hours to locate, retrieve and extract the withheld to be reasonable. Even if the cost estimate provided by the Council was halved it would still be far in excess of the cost limit specified in the Fees Regulations.
29. The Commissioner's decision is that the request is manifestly unreasonable and, therefore, regulation 12(4)(b) is engaged.

Public interest test

30. Regulation 12(4)(b) is subject to the public interest test. This means that, when the exception is engaged, public authorities also have to consider whether, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
31. With regards to the public interest test, in its submissions to the Commissioner, the Council outlined its arguments in favour of disclosing the withheld information. The Council stated that there is a strong public interest in the drafting of the Chiltern and South Bucks local plan. It also considers that there is general public interest in how public money is spent.
32. The Council also outlined its arguments in favour of maintaining its reliance on regulation 12(4)(b) of the EIR. It stated that complying with the request would take a significant amount of time and would divert resources away from other public tasks. The Council also explained that there is already information within the public domain that illustrates the costs of preparing the draft local plan.
33. Therefore, on balance the Council considers that the public interest in maintaining the exception outweighs the public interest in disclosing the withheld information.
34. The Commissioner agrees with the Council that the public interest favours maintaining regulation 12(4)(b) of the EIR. The financial and time burden that disclosing the withheld information would cause to the Council is substantial. In the Commissioner's view that burden would be disproportionate and not in the public interest.
35. The Commissioner's conclusion is that the public interest in the maintenance of the exception provided by regulation 12(4)(b) outweighs

the public interest in disclosure of the withheld information. The Council is not, therefore, required to disclose this information.

36. 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).

37. 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

38. Regulation 9(1) of the EIR says 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.
39. In both its initial response of 5 June 2021 and internal review response of 27 July 2021, the Council did not the advise the complainant that they could refine their request to reduce the cost and burden of their request.
40. However, on 28 June 2022, the Council wrote to the complainant to provide them with advice on how to reduce the scope of their request. The Council suggested that they could reduce the scope of their request by limiting their request to information relating to one or two companies and by reducing the time period of the request.
41. The Commissioner considers that this was an appropriate response in the circumstances. As the Council has now provided the complainant with advice on how to refine their request, the Commissioner decision is that the Council met its obligations under regulation 9(1) of the EIR.

Right of appeal

42. 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@hmcts.gsi.gov.uk>

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

43. 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.
44. 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
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