

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

Decision notice

Date: 8 November 2022

Public Authority: Causeway Coast and Glens Borough Council
Address: Civic Headquarters
Cloonavin
66 Portstewart Road
Coleraine
BT52 1EY

Decision (including any steps ordered)

1. The complainant made a 23-part request to Causeway Coast and Glens Borough Council regarding his concerns about planning matters. The Council refused the request under regulation 12(4)(b) of the EIR on the basis that it was manifestly unreasonable.
2. The Commissioner's decision is that, to the extent that the requested information falls within the scope of the EIR, the Council was entitled to rely on regulation 12(4)(b) to refuse the request. No steps are required.

Request and response

3. On 7 June 2021, the complainant submitted an information request to the Council. The request comprised 23 questions. Owing to its length it is set out in full in an annex at the end of this notice. The Commissioner considers that all 23 questions relate to the complainant's dispute with the Council regarding planning administration.
4. The Council responded on 5 August 2021. It refused the request as manifestly unreasonable in reliance on the exception at regulation 12(4)(b) of the EIR. The Council said:

"...the request has 23 bullet points, some which are multifaceted, and covering records held over a 12 year period by more than one business area and the information is not held in one place or in an

accessible format and is not the type of information required for Council's day to day purposes..."

5. The Council suggested that the complainant consider reducing the scope of the request.
6. The complainant wrote to the Council on 8 August 2021. He stated that he was dissatisfied with the way the Council had handled the request and asked that the Council conduct an internal review. The complainant did not explain why he was dissatisfied, nor did he make any reference to reducing the scope of his request.
7. The Council provided the complainant with the outcome of the internal review on 28 September 2021. The Council maintained its decision that the request was manifestly unreasonable under regulation 12(4)(b) of the EIR.

Scope of the case

8. The complainant contacted the Commissioner on 15 October 2021 to complain about the way his request for information had been handled by the Council.
9. The complainant argued that the Council's reliance on regulation 12(4)(b) was a "red herring" because his request had made and contained elements associated with complaints he had made against the Council. He explained that the Council had not handled these complaints properly, and that

"The disclosure of the requested information should help to settle the disputed matters once and for all".
10. The Commissioner's role is to decide whether a particular request has been handled in accordance with the requirements of the EIR. He cannot comment on or become involved in the complainant's dispute with the Council.
11. The complainant did not dispute that his request fell to be considered under the EIR. Therefore the Commissioner is not required to make a decision on this issue, though he agrees that the EIR is the appropriate access regime in this case.
12. Given the wording of the request the Commissioner has also considered the extent to which the requested information, if held, would be the complainant's personal data.

Reasons for decision

Regulation 5(3): personal data of the requester

13. Regulation 5(3) of the EIR provides that the EIR themselves do not apply to information that is the personal data of the requester. This means that an individual cannot receive their own personal data under the EIR. In such cases the public authority should identify those parts of the request that involve the requester's personal data and consider them under the relevant data protection legislation.¹

Is any of the requested information the complainant's personal data?

14. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual".

15. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

16. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

17. The Commissioner observes that some of the 23 questions set out in the request refer to complaints submitted by the complainant to the Council. For example, part 1 of the request is for:

"A copy of responses issued by the Council in respect of each of the points that form my complaint of August 2019..."

18. Similarly, part 15 of the request is for:

"A copy of all the excuses issued by the council to deny me access to the Council's complaints procedure, and due process, in respect of my complaint of August 2019".

¹ The General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (the DPA).

19. This information, if held, would be the complainant's personal data since it relates to his complaint and he is clearly identifiable as the complainant.
20. As required by regulation 5(3) the Commissioner has thus excluded the complainant's personal data from the analysis set out below. The Commissioner would emphasise that he cannot make any decision relating to the complainant's personal data under the EIR, regardless as to whether he might be entitled to it under other routes of access.

Regulation 12(4)(b): manifestly unreasonable request

21. Regulation 12(4)(b) of the EIR provides an exception from disclosure to the extent that the request is manifestly unreasonable. The term "manifestly unreasonable" is not defined in the EIR. However the Commissioner's published guidance sets out his view that the purpose of the exception is to protect public authorities from exposure to a disproportionate burden or an unjustified level of distress, disruption or irritation, in handling information requests.²
22. Unlike FOIA, the EIR does not set an appropriate costs limit above which public authorities may refuse to comply with requests for information. The main provision for dealing with burdensome requests under the EIR is regulation 7(1).
23. Regulation 7(1) allows a public authority to extend the time for compliance from 20 to 40 working days if it reasonably believes that the complexity and volume of the information requested means that it is impracticable to meet the 20 day deadline.

The Council's position

24. The Council considered the complainant's request to be manifestly unreasonable on the grounds that compliance would constitute a disproportionate burden on its resources.
25. As set out at paragraph 4 above, the Council pointed out that the request contained 23 separate questions, and covered records held over a 12 year period. In particular one question (number 8) would require the Council to manually interrogate all of its planning applications to

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

allow the requested information to be extracted. The Council also set out that it would require substantial time to identify and extract the complainant's personal data, and third party personal data that was exempt under the EIR.

26. The Council estimated that the time required to comply with the request would take at least 18 hours and would divert its staff from their normal duties. The Council further set out that this would have an adverse impact on the delivery of mainstream services.

The complainant's position

27. The complainant provided the Commissioner with a submission in support of his position. The complainant provided background information about his ongoing dispute with the Council. He argued that:

"It is important that my FOI request is answered in full as there are significant differences between what the Council and Alderman [named individual] have stated in respect of my complaints, and the information I have received from the Council in respect of same."

The Commissioner's findings

28. The Commissioner understands that the Council has argued that the complainant's request is unduly burdensome. In this case the Council took additional time to respond to the request as permitted by regulation 7(1), but still considered that compliance with the request would take at least 18 hours.
29. As set out above, there is no appropriate limit under the EIR, and the considerations associated with the application of regulation 12(4)(b) on the grounds of burden are broader than those relevant to section 12 of FOIA. Under EIR, the public authority must consider the proportionality of the burden or costs involved, and decide whether they are clearly and obviously unreasonable.
30. The Commissioner considers the appropriate limit³ relevant to section 12 of the FOIA to serve as a useful guide when considering whether a request is manifestly unreasonable on the basis of costs. For local

³ As set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Fees Regulations).

authorities, the appropriate limit is set at £450, which is the equivalent of 18 hours' work at £25 per hour.

31. The Commissioner is mindful that the complainant has submitted a 23-part request for information over the period 2009-2021. The Commissioner considers that the 23 requests can broadly be categorised as follows:
- i) Information relating to the Council's responses to the complaint submitted by the complainant in 2019
 - ii) Information relating to the Council's responses to enquiries and complaints about emergency service access to identified sites in various specified scenarios
 - iii) Information relating to the Council's responses to complaints, enquiries and planning objections regarding a specified site, in various specified scenarios
 - iv) Information provided by the Council to elected representatives in relation to planning applications, including regarding issues around access and public safety.
 - v) Details of actions taken by specified Council officers to mitigate risk to householders in specified scenarios.
32. Many of the questions are lengthy and contain multiple clauses, premises and qualifications, with slight variations. In several questions the complainant has asked for the number of times individual officers and business areas have taken certain actions, provided certain information, or refused to take certain actions, in response to enquiries, complaints and planning objections.
33. The Commissioner observes that some parts of the request would require the Council to make value judgements rather than extract recorded information. For example, at question 8 the complainant asks how many times the Council "issued responses quoting only those parts of certain sections of Creating Places that supported the Planning Department's actions and agenda".
34. The Commissioner is of the opinion that interpreting this request would require careful consideration by the Council in order to ascertain exactly what recorded information has been requested.
35. The Commissioner has not sought a detailed breakdown from the Council regarding its estimate of 18 hours because he considers the length, phrasing and character of the request to provide clear evidence that it is manifestly unreasonable on the basis of the work that would be required to comply with it.

36. The Commissioner accepts that, in order to comply with the request, the Council would have to go through each question in detail to ascertain whether or not it described recorded information. The Council would then need to consider the extent to which the recorded information, if held, would comprise the complainant's personal data. The Council would need to exclude this information from the EIR request and respond according to the UK GDPR.
37. In respect of the remainder of the request, the Council would then be obliged to trawl through twelve years of records in order to ascertain whether recorded information was held. The Commissioner considers it reasonable to estimate that it could take at least an hour to complete this process for each relevant question, given the length and complexity of the questions set out.
38. The Commissioner further accepts the Council's argument that compliance with the request would have the consequence of distracting staff from other duties. The work that would be required to comply with the request would not have any wider benefit, either to the Council or to the public. Given that the Council would subsequently need to consider whether the information could be disclosed or if other exceptions applied, undertaking this work would not necessarily benefit even the complainant.
39. For the reasons set out above the Commissioner concludes that the complainant's request is manifestly unreasonable and therefore the Council was entitled to engage the exception at regulation 12(4)(b).

Public interest test

40. 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.
41. In its refusal notice the Council stated that it had applied the presumption in favour of disclosure as required by regulation 12(2) of the EIR. It also recognised the public interest in an "accountable and transparent decision making process".
42. The Council also set out arguments in favour of maintaining the exception at regulation 12(4)(b) of the EIR. The Council stated that "the amount of staff hours is extensive, and would require the diversion of staff from their normal duties which would have an adverse impact on delivery of mainstream services".

43. The complainant argued that it was in the public interest for the Council to disclose the information, so that the public could have confidence that senior Council staff were “acting honestly and are beyond reproach”.
44. The Commissioner’s published guidance on regulation 12(4)(b) says that many of the issues relevant to the public interest test will have already been considered when deciding if this exception is engaged. This is because engaging the exception includes some consideration of the proportionality and value of the request. Nevertheless it is also essential to attach appropriate weight to the presumption in favour of disclosure, ensuring that a proper balancing exercise is conducted.
45. The Commissioner has carefully considered the public interest arguments put forward by the complainant and by the Council. The Commissioner recognises that the complainant has requested information in order to further his dispute with the Council. The questions appear to have been phrased to test the Council’s handling of the dispute, rather than with the aim of accessing official information. The complainant has advised the Commissioner of his concerns about the Council’s actions, though he rightfully acknowledges that this is not something the Commissioner can investigate.
46. The Council recognises that the requested information, if held, may be of value to the complainant, though this is by no means certain. However, the Council does not consider the requested information to be of strong interest or wider benefit to the public.
47. Finally, the Commissioner is acutely aware that the Council, like many public authorities, is facing substantial pressures to provide public services with limited resources. The Commissioner considers that obliging the Council to comply with this request would be likely to have an adverse impact on the handling of other requests for information, and the delivery of services generally.
48. The Commissioner considers that there is a strong public interest in protecting the Council from expending disproportionate time and resources in order to comply with this particular request. He concludes that the public interest in maintaining the exception in this case is sufficiently strong to outweigh the public interest in disclosure, even taking into account the presumption in favour of disclosure.

Regulation 9 – advice and assistance

49. 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.

50. In this case the Council explained why the request was considered burdensome. It suggested that the complainant consider reducing the scope of his request, for example by reducing the time period of their request or by limiting their request to a particular business area.
51. The Commissioner considers that this was an appropriate response in the circumstances. The Commissioner is therefore satisfied that the Council met its obligations under regulation 9(1) of the EIR.

Other matters

52. The Commissioner recognises that most people will exercise their rights responsibly. He also recognises that some requesters submit requests which may, whether by accident or design, cause a public authority an unjustified or disproportionate level of disruption or irritation.
53. With this in mind, the Commissioner has published guidance that may be useful to anyone who has made, or wishes to make, an information request.⁴ The Commissioner would recommend consulting this guidance before submitting a request, especially if the requester is involved in a dispute or other complaint with a public authority. Following the guidance may reduce the risk of a request being refused as manifestly unreasonable.

⁴ <https://ico.org.uk/your-data-matters/official-information/>

Right of appeal

54. 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

55. 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.
56. 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

Sarah O’Cathain
Senior Case Officer
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex: the request of 7 June 2021:

The following request for information is made under the Freedom of Information Act, and refers to 2009 to 2021.

1. A copy of the responses issued by the Council in respect of each of the points that form my complaint of August 2019, together with the date and time each response was issued prior to August 2019, as has been claimed is the case.
2. The number of responses issued by the Council's Chief Executive, the Director of Performance and the Head of the Planning Department, in relation to the issue of how the emergency services, particularly the Fire and Rescue Service, gain vehicular access to Swilly Park, Swilly Drive, Swilly Green, Swilly Mews and Swilly Close in Portstewart in the event the only access road is blocked.
3. The number of responses issued by the Council's Chief Executive, the Director of Performance and the Head of the Planning Department, in relation to the issue of how the emergency services, particularly the Fire and Rescue Service, gain vehicular access to Swilly Park, Swilly Drive, Swilly Green, Swilly Mews and Swilly Close in Portstewart in the event the only access road is blocked, that did not contain details of how the emergency services, particularly the Fire and Rescue Service, gain vehicular access to Swilly Park, Swilly Drive, Swilly Green, Swilly Mews and Swilly Close in Portstewart in the event the only access road is blocked.
4. The number of times the Council's Chief Executive, the Director of Performance and the Head of the Planning Department stated that the matter of how the emergency services, particularly the Fire and Rescue Service, gain vehicular access to Swilly Park, Swilly Drive, Swilly Green, Swilly Mews and Swilly Close in Portstewart in the event the only access road is blocked, had been answered during formal complaints processes.
5. The number of times the Chief Executive, the Director of Performance and the Head of the Planning Department refused to progress my complaint on the grounds that the points raised had previously been answered.
6. The number of times the Council's Planning Department quoted from the Creating Places document in response to enquiries and complaints regarding the issue of how the emergency services, particularly the Fire and Rescue Service, gain vehicular access to Swilly Park, Swilly Drive, Swilly Green, Swilly Mews and Swilly Close in Portstewart in the event the only access road is blocked.

7. The number of times the Council's Planning Department quoted from the Creating Places document in particularly the Fire and Rescue Service, gain vehicular access to Swilly Park, Swilly Drive, Swilly Green, Swilly Mews and Swilly Close in Portstewart in the event the only access road is blocked, and failed to make any mention of the parts of section 10 of Creating Places that covers the subject of Ease of Access by the Emergency Services.
8. The number of times the Council's Planning Department issued responses quoting only those parts of certain sections of Creating Places that supported the Planning Department's actions and agenda.
9. The number of times the Council's Planning Department failed to quote certain parts of sections of Creating Places that did not support the Planning Department's actions and agenda in response to complaints, enquiries and objections to Planning Applications for the site now known as Swilly Green, Swilly Close and Swilly Mews.
10. The number of times the Council's Planning Department quoted from the Creating Places document in response to enquiries, complaints and planning objections regarding the issue of how the emergency services, particularly the Fire and Rescue Service, gain vehicular access to Swilly Park, Swilly Drive, Swilly Green, Swilly Mews and Swilly Close in Portstewart in the event the only access road is blocked, and mentioned their concern that a second access road to the area would create a short cut for non-residents,
11. The number of times the Council's Planning Department quoted from the Creating Places document in response to enquiries, complaints and planning objections regarding the issue of how the emergency services, particularly the Fire and Rescue Service, gain vehicular access to Swilly Park, Swilly Drive, Swilly Green, Swilly Mews and Swilly Close in Portstewart in the event the only access road is blocked, and did not make any reference to the Section of Creating Places that deals specifically with the subject of how to prevent creating a short cut in the road layout of urban housing developments.
12. The number of times the Council's Planning Department, in response to enquiries and complaints regarding the issue of how the emergency services, particularly the Fire and Rescue Service, gain vehicular access to Swilly Park, Swilly Drive, Swilly Green, Swilly Mews and Swilly Close in Portstewart in the event the only access road is blocked, mentioned the inadequate sight line at the right angled bend on Swilly Park, the only access road to Swilly Green, Swilly Mews and Swilly Close.
13. The number of times the Council's Planning Department in response to concerns raised in relation to how the emergency services, particularly

the Fire and Rescue Service, gain vehicular access to Swilly Park, Swilly Drive, Swilly Green, Swilly Mews and Swilly Close in Portstewart in the event the only access road is blocked, stated that the only access road has a design speed of 20 mph while retaining a contradictory urban speed limit of 30 mph, or stated that the road was designed for cars and light vans, and not designed for use by heavy goods vehicles.

14. The number of times since 2009 that the Council's Planning Department informed elected representatives of the Council's Planning Committee, prior to, or as part of the Planning Department's recommendation for Approval of Planning Applications for the site South of Swilly Park, now known as Swilly Green, Swilly Close and Swilly Mews, that the only access road has a design speed of 20 mph while having a contradictory urban speed limit of 30 mph, that the sight line at the right angled bend on Swilly Park, the only access road to Swilly Green, Swilly Mews and Swilly Close was inadequate and less than the distance required for a vehicle travelling and 30 mph or 20 mph to stop in the distance a driver can see to be clear, that the only access road did not have any parking bays in keeping with section 20 of Creating Places, that the traffic calming measure on the right angled bend on Swilly Park, was the least best option and does not slow vehicular traffic ahead of the hazard, instead forcing motorists on out bound journeys into the path of inbound traffic.
15. A copy of all the excuses issued by the council to deny me access to the Council's complaints procedure, and due process, in respect of my complaint of August 2019.
16. A copy of all the responses issued by the Council that state the matters raised in my complaint of August 2019 had been answered before.
17. Full details of the action taken by the Council's Chief Executive to mitigate the life threatening risk to householders in Swilly Park, Swilly Drive, Swilly Green Swilly Mews and Swilly Close, in the event the only access road to these addresses is blocked and the emergency services particularly the Fire and Rescue Service do not have vehicular access, referred to as ease of access in Section 10 of Creating Places.
18. Full details of the action taken by the Council's Director of Performance to mitigate the life threatening risk to householders in Swilly Park, Swilly Drive, Swilly Green Mews and Swilly Close, in the event the only access road to these addresses is blocked and the emergency services particularly the Fire and Rescue Service do not have vehicular access, referred to as ease of access in Section 10 of Creating Places.
19. Full details of the action taken by the Council's Head of Planning Department to mitigate the life threatening risk to householders in

Swilly Park, Swilly Drive, Swilly Green Swilly Mews and Swilly Close, in the event the only access road to these addresses is blocked and the emergency services particularly the Fire and Rescue Service do not have vehicular access, referred to as ease of access in Section 10 of Creating Places.

20. The date the Planning Department became aware of the shortcomings of the only access road to Swilly Park, Swilly Drive, Swilly Green Swilly Mews and Swilly Close.
21. Details of why the Council's Planning Department did not highlight the shortcomings of the only access road to Swilly Park, Swilly Drive, Swilly Green Swilly Mews and Swilly Close, during Planning Applications for the site, objections to the Planning Applications and in complaints and enquiries, when they were very obvious and immediately identifiable by the author of Creating Places, reviewing photographs sent to him in England, and yet were ignored and never mentioned by Planners whose office is a mere 5 miles away.
22. Please provide a copy of the response that was created for the Mayor. The one that he recently stated he was unhappy with, and which he did not issue in response to my preChristmas 2020 complaint. And, a copy of all correspondence howsoever generated that was sent or received by the Mayor and the Mayor's Office in respect of my pre-Christmas 2020 complaint and my complaint of August 2019.
23. The Chief Executive, and the Head of the Planning Department, in email responses to complaints, stated that it was unlawful for the Council to enforce every breach of Planning Control. Please provide written documentary evidence that shows clearly and in plain English what makes it unlawful for the Council to enforce every breach of Planning Control. Please also provide written documentary evidence that shows clearly and in plain English what makes it lawful for the Council not to enforce every breach of Planning Control. See enclosed email response from David Jackson Chief Executive of the Causeway Coast and Glens Council and see also the fourth paragraph of Denise Dickson, ~Head of Planning's Stage Two email response reference: CO/2017.0008 CMP and LA01/2017/0152/CA Dated September 25, 2017, which contains the same statement as that highlighted in the above Stage Three response from David Jackson.