

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

### **Decision notice**

**Date:** 13 March 2023

**Public Authority:** Charnwood Borough Council  
**Address:** Southfield Road  
Loughborough  
LE11 2TN

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

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1. The complainant has requested information from Charnwood Borough Council ("the Council") in relation to documents and correspondence held for a specific area of land since 1 January 2020.
2. The Commissioner's decision is that the Council was entitled to refuse to comply with the request in accordance with regulation 12(4)(b) of the EIR. The Commissioner has also decided that the Council complied with its obligations under regulation 9 of the EIR, by providing adequate advice and assistance to the complainant.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

### **Request and response**

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4. On 10 February 2022, the complainant wrote to the Council and requested information in the following terms:

"I am writing to you under the Environmental Information Regulations 2004 to request the following from Charnwood Borough Council.

All documents, and correspondence, that you hold in relation to the land at the top of Leconfield Road (see map attached) since 1st January 2020. This must include all correspondence between

- Council Officers
- Council Officers and the Developers (originating from either party)
- Council Officers and any of the Developer's Agents (originating from either party)

Please provide the information electronically.

In accordance with Regulation 9 please can you provide any advice and assistance that may help my request to be more effective?"

5. The Council responded on 9 March 2022. It provided the complainant with a link to the information held on the Council's planning portal. However, it advised it was withholding the remaining information (information that does not form part of the public record), under regulation 12(4)(b) of the EIR.
6. Following an internal review the Council wrote to the complainant on 14 April 2022. It stated that it upheld its original position.

### **Scope of the case**

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7. The complainant contacted the Commissioner 21 April 2022 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of this case is to determine whether the Council is entitled to rely on regulation 12(4)(b) of the EIR to refuse to comply with the request. The Commissioner will also go on to consider if the Council provided adequate advice and assistance in accordance with regulation 9 of the EIR.

### **Reasons for decision**

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Is the requested information environmental?

9. Regulation 2(1) of the EIR defines environmental information as being information on:
  - (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;

10. The Commissioner considers that, as the requested information is related to planning and other factors around a specific area of land, it falls under regulation 2(1)(c), due to the information relating to plans likely to affect the element and factors referred to in 2(1)(a). The Commissioner therefore considers that the request should be dealt with under the EIR.

### **Regulation 12(4)(b) of the EIR – manifestly unreasonable**

11. 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. The Commissioner has published guidance<sup>1</sup> on regulation 12(4)(b). In this instance, the Council has cited cost as the basis of the request's manifest unreasonableness.
12. The Freedom of Information and Data Protection (Appropriate Limit and Fees) sets out an appropriate limit for responding to requests for information under FOIA. The limit for local authorities is £450, calculated at £25 per hour. This applies a time limit of 18 hours. Where the authority estimates that responding to a request will exceed this limit the authority is not under a duty to respond to the request.
13. Although there is no equivalent limit within the EIR, in considering the application of Regulation 12(4)(b) the Commissioner considers that public authorities may use equivalent figures as an indication of what Parliament considers to be a reasonable burden to respond to EIR

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

requests. However, the public authority must then balance the cost calculated to respond to the request against the public value of the information which would be disclosed before concluding whether the exception is applicable.

14. In estimating the time and burden which it would take to respond to a request, the authority can consider the time taken to:
  - determine whether it holds the information
  - locate the information, or a document which may contain the information
  - retrieve the information, or a document which may contain the information, and
  - extract the information from a document containing it.
15. Where a public authority claims that Regulation 12(4)(b) is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit. This is in line with the duty under Regulation 9(1) of the EIR.
16. The Council has explained that it has provided over 550 documents on the Planning Portal, which is publicly accessible. It went on to advise that there are a further 280 documents that are held, which have not been published.
17. The Council explained that it would need to review each document to determine whether they meet the criteria of the request and to determine if there is any sensitive information, or if further exceptions of the EIR may be applicable.
18. The Council explained to the Commissioner that is carried out a sampling exercise using seven random files, which varied in content and size. It explained that the lowest amount of time that a file took to review was two minutes and the longest exceeded thirty minutes. It advised that therefore, the average time it took to review each file was eight minutes. As there are 280 files, this would take approximately 37 hours to review all of the documents, but potentially far longer.
19. The Commissioner is satisfied that the Council's explanations above are justified, as it has explained how long it would take to review each document. From the information provided by the Council, the Commissioner is satisfied that the Council would also need to take additional time to contact any third parties to determine if information, could be released under the EIR.

20. The Commissioner is therefore satisfied that the time it would take to carry out the necessary searches would far exceed the appropriate limit of 18 hours set by the FOIA fees regulations for local authorities outlined in paragraph 14 above.
21. Having considered the Council's position the Commissioner is satisfied that the exception in Regulation 12(4)(b) has been correctly engaged by the Council. The Commissioner has therefore gone on to consider the public interest test required by Regulation 12(1)(b).

### **Regulation 12(1)(b) – public interest test**

22. The test is whether, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
23. There will always be some public interest in disclosure to promote transparency and accountability of public authorities, greater public awareness and understanding of environmental matters, a free exchange of views, and more effective public participation, all of which ultimately contribute to a better environment.
24. The complainant's request relates to planning matters and other information in relation to the specific area of land. There is a public interest in such matters as it will impact on those who live in those areas.
25. The Council has explained that it considers that there is a general public interest in openness and transparency, however, this does not outweigh the public interest in the Council expending resources on a request that is manifestly unreasonable.
26. The Council has also explained that the planning application is at the appeals stage and all information relevant to the Council's decision and the appeal inquiry, has already been made public.
27. The Council has explained that it is not in the public interest to disclose information that has not been included in the formal planning file and was not used to reach the decision. It added that the information could potentially be misinterpreted and prejudice the planning appeal.
28. The Council also argued that should the information be released, it could potentially jeopardise the safe space required by local authorities to allow for free and frank discussions away from external scrutiny.
29. The Council added that it would be disproportionate to utilise public resources to provide information that was not considered as part of the

planning decision and would not add anything further to the planning process.

30. The Commissioner is satisfied that for the Council to respond to the request, the time it would take is significant and disproportionate compared to the public interest in the disclosure of the information. The Commissioner is therefore satisfied that, in this case, the balance of the public interest lies in the exception being maintained.

**Regulation 9(1) – duty to provide advice and assistance**

31. Broadly, Regulation 9(1) of the EIR provides that, where an authority is refusing the request because an applicant has formulated a request in too general a manner, the authority must provide advice and assistance to the requestor, insofar as it would be reasonable to expect the authority to do so, to allow them to reframe the request so that relevant information can be provided.
32. In this case, the Council advised the complainant that the information used to make the decision that the Council came to, is already available on the planning portal, thereby signposting the information which could be provided without triggering excessive costs to its resources.

## Right of appeal

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

34. 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.
35. 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 .....**

**Michael Lea**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**