

Environmental Information Regulation 2004 (EIR)

Decision notice

Date: 7 February 2023

Public Authority: Cornwall Council
Address: New County Hall
Truro
Cornwall
TR1 3AY

Decision (including any steps ordered)

1. The complainant has requested information from Cornwall Council (“the Council”) regarding a specific property and the surrounding areas. The Council refused to comply with the request, citing regulation 12(4)(b) of the EIR – manifestly unreasonable.
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 also finds that the Council has complied with its obligation under regulation 9 of the EIR, to offer advice and assistance. However, the Council failed to respond to the request for an internal review within 40 working days and, as such, has breached regulation 11(4) of the EIR.
3. The Commissioner does not require the Council to take any steps as a result of this decision notice.

Request and response

4. On 12 November 2021, the complainant wrote to the Council and requested information in the following terms:

“I would like to request copies of all correspondence – written, electronic, phone conversations / messages or otherwise to/from Cornwall Council its Officers and Representatives (including but not

limited to Highways, Cornwall Legal and Corserv and its sub-divisions including Cormac) in relation to Hobbacott Lane Marhamchurch and/or [named property], Hobbacott Lane, Marhamchurch and/or Land Registry Title Number [number redacted] between the dates of 1st January to 31st December 2015 and 1st August 2019 present.”

5. The Council wrote to the complainant on 29 November 2021, advising that the amount of information that has been requested is substantial and, as such, it was applying regulation 12(4)(b) of the EIR. It advised the complainant to refine their request and provided ways in which to do this.
6. On 4 January 2022, the complainant wrote to the Council providing the following refined request:

“1. For the dates 1st January to 31st December 2015, information relating specifically to;- [name of property], Hobbacott Lane, Marhamchurch, and/or Land Registry Title Number [number redacted].

a. For the dates 1st August 2019 to present, the following may be excluded;-

Anything to the east of [name of property], Hobbacott Lane.
Anything to the west of [name of property], Hobbacott Lane.
Planning application [number redacted] – Land South of [name of property].
Planning application [number redacted] – Land South of [name of property].
Planning application [number redacted] – Land West of [name of property].
Planning application [number redacted]– Land South of [name of property].
Planning application [number redacted] – Land East of [name of property].
Planning application [number redacted] – Land South of [name of property].
Planning application [number redacted] – [name of property].
Planning application [number redacted] – Land South of [name of property].

2. Information relating solely to the construction of the development known as [name of development].”

7. The Council responded on 25 January 2022, advising that it was relying on regulation 12(4)(b) of the EIR – manifestly unreasonable. It explained that it was relying on regulation 12(4)(b) due to the

significant amount of information the complainant had requested, even following the request being refined.

8. Following an internal review the Council wrote to the complainant on 15 July 2022. It stated that it upheld its original position.

Scope of the case

9. The complainant contacted the Commissioner on 24 July 2022, to complain about the way their request for information had been handled.
10. 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

Is the requested information environmental?

11. 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;
12. The Commissioner considers that, as the requested information is related to planning applications and other factors around specific plots 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(2)

13. 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.
14. As set out 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 12(4)(b) of the EIR – manifestly unreasonable

15. 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 guidance¹ on regulation 12(4)(b).
16. 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
17. 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 requests. However, the public authority must then balance the cost calculated to respond to the request against the public value of the

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

information which would be disclosed before concluding whether the exception is applicable.

18. 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.
19. 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.
20. The Council explained that it had done a search through emails for correspondence and information holders were consulted about what information they hold. It explained that the time taken to search the email was five hours. It advised that it estimated it would take a further two and a half hours to collate any information held outside of the emails.
21. The Council explained that the email search returned a total of 6712 emails and when a sampling exercise was carried out, it took approximately three minutes to review each email.
22. The Council advised that its officers had sought legal advice, which totalled five hours and it was estimated that it would take an additional eight hours to carry out third-party consultation. It explained that to comply with the request would take approximately 374 hours.
23. The Commissioner is satisfied that the Council's explanations above are justified, as it has explained the way in which it would need to conduct the searches and the time it would take to review each email, along with the additional time to contact third-parties and the time already taken to obtain legal advice. Due to the amount of information already located, even if the time taken was half the amount estimated, it would still represent a manifestly unreasonable burden to comply with.
24. 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 16 above.

25. The Commissioner notes that there is a public value in the information being disclosed in this case. However, the Commissioner considers that the costs outlined above are so extensive that the public value in the disclosure of the information would not make the request reasonable in this case.
26. 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

27. 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.
28. 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.
29. The complainant's request relates to planning matters and other information in relation to specific areas of land. There is a public interest in such matters as it will impact on those who live in those areas.
30. The Council has explained that, although disclosure of the information would adhere to the Council's policy of being as open and transparent as possible and it would allow the public to gain an understanding of the issues at hand, along with any related decision making, it is not outweighed by the amount of office time that would be required in order to provide a response.
31. 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

32. 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.

33. The Council advised the complainant that they would need to refine the request. The complainant did refine the request, however, they still requested a substantial amount of information. The Council explained that to comply with the request, it would involve a significant cost and diversion of resources from its work.
34. The Commissioner's decision is that the Council has therefore complied with the requirements of regulation 9(1) of the EIR.

Regulation 11(4)

35. Regulation 11(4) requires a public authority to complete its reconsideration as soon as possible and in any event within 40 working days.
36. In this case, the complainant made their request for an internal review on 13 March 2022 and the response was not provided until 15 July 2022. This represents a breach of regulation 11(4) of the EIR.

Right of appeal

37. 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

38. 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.
39. 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