

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

### **Decision notice**

**Date:** 25 January 2023

**Public Authority:** Bristol City Council

**Address:** City Hall  
Bristol  
BS1 9NE

### **Decision**

---

1. The complainant requested information from Bristol City Council ("the Council") relating to the installation of a loading bay.
2. The Commissioner's decision is that the Council is entitled to rely on regulation 12(4)(b) (manifestly unreasonable) of the EIR to refuse to provide the information requested in part d of the request. However, he finds that the Council failed to provide reasonable advice and assistance and therefore failed to meet its obligations under regulation 9 of the EIR.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
  - Provide the complainant with advice and assistance to help them submit a less burdensome request.
4. The Council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

---

5. The complainant made the following information request to the Council on 16 June 2022:

"A Loading Bay has recently been marked on the footway on the south side of Nelson Street. The loading bay appears to have been installed by a private developer and not by contractors working on behalf of Bristol City Council.

I am unable to locate a Traffic Regulation Order, or any formal consultation on a proposed Traffic Regulation Order, for a new loading bay at the footway at this location.

Please advise:

1. If the loading bay has been legally installed, please provide a copy of the Traffic Regulation Order (TRO) and details of the consultation for the TRO.
  2. If the loading bay has been installed without a TRO, please advise the current status of the Loading Bay. For example, is it an offence for vehicles to park on the footway in the area marked as if it was a legitimate Loading Bay.
  3. If the loading bay has been installed without a TRO, please advise what action the council is to take to rectify the issue.
    - d. Please provide a copy of any (and all) correspondence (internal and external) regarding a new loading bay on the footway at this location."
6. The Council provided the complainant with information falling within the scope of parts 1, 2 and 3 of the request. However, it refused to provide the information requested in part d of the request citing regulation 12(4)(b) of the EIR as its basis for doing so.

## Reasons for decision

---

### Regulation 12(4)(b) – manifestly unreasonable

7. This reasoning covers whether the Council is entitled to rely on regulation 12(4)(b) of the EIR to refuse to provide the information requested in part d of the request.

8. 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.
9. The Council considers part d of the request to be manifestly unreasonable. The Council stated that in order to provide the requested information, at least four Council Officers would have to review the emails of multiple teams from the last six years for information within the scope of part d of the request. The Council estimates that it would take each Council Officer over five hours to review the emails.
10. The Council explained that it has conducted a search of all emails held by the Council from the last two years for information falling within the scope of part d of the request. When conducting its search, the Council used the search terms 'Nelson Street' and 'Loading Bay' as these search terms were suggested by the complainant in the complainant's internal review request. The Council located 931 emails which may fall within the scope of part d of the request as a result of its search.
11. The Council estimates that it would take approximately two minutes to review each of the 931 emails for information falling within the scope of part d of the request. This estimate is based on a sampling exercise. Therefore, the Council calculated that in total, it would take approximately 31 hours to review all 931 emails for information falling within the scope of the request (931 emails x 2 minutes = 31 hours).
12. Whilst the Council has stated that it would have to review emails from the last 6 years in order to provide the information requested in part d of the request, the Council has not explained why this would be necessary. Therefore, the Commissioner does not accept that the Council would need to review emails from the last six years in order to provide the information requested in part d of the request.
13. However, the Commissioner does accept that the Council would need to review emails from the last two years in order to provide the information requested in part d of the request. The Commissioner considers the Council's estimate of 31 hours to review 931 emails from the last two years for information falling within the scope of part d of the request to be reasonable.
14. The Commissioner decision is that the request is manifestly unreasonable and therefore, regulation 12(4)(b) is engaged. The Commissioner will now go on to consider the public interest test.
15. Whilst the Commissioner recognises that there is a public interest in the transparency of the Council, he considers that complying with part d of the request would place a significant burden on the Council's limited

resources. In the Commissioner's view that burden would be disproportionate and not in the public interest.

16. 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.
17. 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).

18. 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 and the Council was not, therefore, required to disclose this information.

### **Regulation 9 - advice and assistance**

19. 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.
20. Whilst the Council stated in its initial response to the request that part d of the request was too wide ranging and that the Council could conduct a more targeted search if part d of the request was more specific, the Council did not advise the complainant that they could refine part d of their request to reduce the cost burden. Furthermore, the Council did not provide the complainant with suggestions on how to reduce the scope of part d of their request.
21. The Commissioner's decision is that the Council did not provide the complainant with adequate advice and assistance and therefore breached regulation 9 of the EIR.

## Right of appeal

---

22. 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@justice.gov.uk)

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

23. 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.
24. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**