

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 22 May 2023

Public Authority: West Devon Borough Council
Address: Kilworthy Park
Drake Road
Tavistock
Devon
PL19 0BZ

Decision (including any steps ordered)

1. The complainant requested information from West Devon Borough Council ("the Council") relating to a planning application.
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 comply with the request. The Commissioner has also decided that the Council complied with its obligations under regulation 9 of the EIR.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 3 October 2022, the complainant wrote to the Council and requested information in the following terms:
 1. "A copy of all correspondence to and from [Council officer name redacted] in relation to application 1291/22/ARC received or sent before 6th June 2022."
 2. "A copy of all correspondence sent by [Council officer name redacted] in relation to application 1291/22/ARC."

5. The Council responded on 26 October 2022. It refused both requests, citing the manifestly unreasonable exception under regulation 12(4)(b) of the EIR as its basis for doing so. Specifically it stated that, when considered together and aggregated with previous similar requests made by a different applicant, complying with the requests would place a disproportionate burden on its resources due to the cost of complying with these requests.
6. Following an internal review the Council wrote to the complainant on 25 November 2022. It upheld its position.

Reasons for decision

Regulation 12(4)(b)– manifestly unreasonable

7. 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). In this instance, the Council has cited cost as the basis of the request's manifest unreasonableness.
8. The Freedom of Information and Data Protection (Appropriate Limit and Fees) ("the Fees Regulations") sets out an appropriate limit for responding to requests for information under the Freedom of Information Act 2000 (FOIA). The limit for public authorities such as the Council is £450. As the cost of complying with a request must be calculated at the rate of £25 per hour, this effectively imposes a time limit of 18 hours for the Council.
9. 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 the Fees Regulations as an indication of what is a reasonable burden to respond to EIR requests. However, the public authority must then balance the cost calculated to respond to the

¹ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/manifestly-unreasonable-requests-regulation-12-4-b-environmental-information-regulations/>

request against the public value of the information which would be disclosed before concluding whether the exception is applicable.

10. Under the Fees Regulations, for requests made under FOIA, when a public authority is estimating whether the appropriate limit is likely to be exceeded, it can include the costs of complying with two or more requests where those requests are:
 - made by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;
 - made for the same or similar information; and
 - received by the public authority within any period of 60 consecutive working days.
11. Although the Fees Regulations do not apply under the EIR and there is no specific provision for the aggregation 'of substantially similar' requests, the Commissioner considers that there may be occasions where it is permissible to consider a number of EIR requests together when deciding if they are manifestly unreasonable because of cost or burden.
12. In its submissions to the Commissioner the Council stated that it had aggregated the cost of complying with the two requests made by the complainant on 3 October 2022 with eight requests made between 6 July 2022 and 6 September 2022 by a different requestor. These eight requests were all made by one requestor who used a work email address from a property development company of which the complainant is a director. All of the eight requests related to the same planning application as the requests made by the complainant and also sought the release of internal email correspondence between officers within the planning team. The Council therefore argues that all of the requests it has aggregated were for similar information and given that the requests were made by the employee of a company and then a director of that company it argues that they were made in pursuance of a campaign.
13. The Council also argues that all of the requests it has aggregated were made within a short timescale. The Commissioner notes that all of the request that the Council has aggregated were made within 60 consecutive working days.
14. In the Commissioner's view, in the circumstances of the case, it was appropriate for the Council to aggregate the ten requests to determine whether they are manifestly unreasonable because of cost. The Commissioner is satisfied that the requests were made for similar

information and were all made over a short period of time by two requestors acting in the interests of the same property development company. The Commissioner has therefore gone on to consider the Council's arguments regarding the cost of complying with the ten requests it has aggregated.

15. The Council has stated that, of the eight requests made by the other requestor, it provided a response to the first five and refused the final three on the grounds that they were manifestly unreasonable. It took the Council a total of 20 hours 13 minutes to comply with the five requests to which it provided a response.
16. The Council estimates that to comply with the final 3 requests made by the other requestor would have taken 20 hours 36 minutes. It did not provide a detailed explanation as to how it reached this estimate in its submissions to the ICO.
17. The Council estimates that to comply with the two requests made by the complainant on 3 October 2022 would take 2 hours 48 minutes and 4 hours 57 minutes respectively, a total of 7 hours 45 minutes. The Council had identified 26 records containing information within the scope of the first request and 69 records containing information within the scope of the second request. To reach its estimates, in each case it estimated it would take three minutes to review each email, five minutes to review each file and in addition it would take 1 hour per request to extract the information from the record and that it would need to spend 30 minutes per request on "consultation". The Council did not specify what it meant by consultation. The Commissioner is satisfied, however, that 1 hour for extraction per request and three minutes per email and five minutes per file are reasonable estimates.
18. The Commissioner is satisfied that when aggregated together the cost of complying with the ten requests would be manifestly unreasonable. The Commissioner has taken the 18 hours set out in the Fees Regulations as a guide as to what a reasonable burden on the Council's resources to respond to the requests would be. The Council has already spent in excess of 18 hours complying with the first five requests. If the Commissioner were to accept all of the estimates given by the Council the total amount of time taken to comply with the ten requests would be 48 hours 34 minutes. He does note that the Council has not provided detailed information about how the figure 20 hours 36 minutes was reached as an estimate for the time it would have taken to comply with the final three requests made by the other requestor or what the 30 minutes consultation for each of the two requests made by the complainant involved. However, even excluding the 20 hours 36 minutes figure and the one hour on consultation, the Council has accounted for 26 hours 58 minutes of staff time. Even given the presumption in favour

of disclosure specified in regulation 12(2) and that the Fees Regulations are only a guide in this case, the Commissioner accepts that more than three standard working days is a significant amount of time for the Council to spend on closely linked requests. Therefore, the Commissioner is satisfied, even in the absence of further details about the 20 hours 36 minutes figure and the one hour on consultation, that the aggregated cost of complying with the ten requests would be manifestly unreasonable on the grounds of cost.

19. In the Commissioner's view complying with the two requests made by the complainant would therefore place a disproportionate burden on the Council's resources and therefore the manifestly unreasonable exception is engaged.
20. As the Commissioner has determined regulation 12(4)(b) is engaged he has gone on to consider the public interest test.

Public interest test

21. The public interest test will consider, whether in the circumstances of this case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
22. The Council acknowledges that there is some public interest in disclosure as disclosure would promote general openness and transparency by the Council, allow the public to understand how finances are spent and allow the public a better understanding of the planning process.
23. Nevertheless the Council argues that maintaining the exception would protect the Council from exposure to a disproportionate burden on its resources. It also argues that the information provided in response to the first five requests has gone some way to meet the public interest in disclosure. The Council has also stated that it has not received any requests for information about the application from requestors not connected to the development company.
24. 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 in environmental decision making, all of which ultimately contribute to a better environment. However, the Commissioner notes that in this case the public interest in disclosure is relatively limited and has already been met to a certain extent through the responses provided to the first five requests.
25. In deciding that the exception is engaged, the Commissioner has already determined that complying with the two requests made by the

complainant would place a disproportionate burden on the Council's resources.

26. The Commissioner is satisfied that for the Council to respond to the requests, the time it would take (when aggregated with the previous eight requests) 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 – Duty to provide advice and assistance

27. 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.
28. In this case the Commissioner has taken the 18 hour limit from the Fees Regulations as a guide to a reasonable amount of time for the Council to spend on complying with these aggregated requests. As the Council has already exceeded the 18 hour limit in responding to the first 5 of the aggregated requests, in the Commissioner's view it would not be reasonable to expect the Council to provide advice and assistance to the complainant about reframing their requests. This is because no reframing of the requests could bring the time to comply with the aggregated requests under the cost limit, as this has already been exceeded.
29. The Commissioner's decision is therefore that the Council complied with its obligations under regulation 9 of the EIR.

Right of appeal

30. 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

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

31. 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.
32. 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

Victoria James
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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