

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

### **Decision notice**

**Date:** 14 March 2023

**Public Authority:** Cotswold District Council  
**Address:** Trinity Road  
Cirencester  
Gloucestershire  
GL7 1PX

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

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1. The complainant requested information from Cotswold District Council ("the Council") relating to a section 106 agreement.
2. The Commissioner's decision is that the Council has failed to demonstrate that regulation 12(4)(b) is engaged and therefore, is not entitled to rely on this exception.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
  - Issue a fresh response to the request that does not rely on regulation 12(4)(b) of the EIR.
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 FOIA and may be dealt with as a contempt of court.

## **Request and response**

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5. The complainant made the following request for information to the Council:

“Please can I have all information (including but not limited to emails, presentations, meeting minutes, memos) concerning whether or not to enforce the s.106 Agreement at Rendcomb Airfield, the Whiteway, Rendcomb Aerodrome, The Whiteway, Cirencester, Gloucestershire, United Kingdom, GL7 7DF. I would like the information to be sent to me in paper and electronic format.”
6. The Council refused to provide the requested information citing regulation 12(4)(b) (manifestly unreasonable) of the EIR as its basis for doing so.

## **Reasons for decision**

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7. This reasoning covers whether the Council is entitled to rely on regulation 12(4)(b) (manifestly unreasonable) to refuse to provide some information within the scope 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.

## **The Council's position**

9. In its submissions to the Commissioner, the Council stated that all information held within the scope of the request is available within the public domain as the Council has published all information relating to the proposal to vary the obligation of a section 106 agreement, which this request relates to, on its planning portal. The Council explained that in total, it has published 160 documents relating to the application including emails, consultee comments, general comments, reports, photographs, applications, screening opinions, letters, requisite notices, copies of the previous section 106 agreement, drawings and plans on its planning portal.
10. The Council stated that in order to provide all the information it holds within the scope of the request, it would have to review each of the 160 documents relating to the proposal to vary the obligation of a section 106 agreement which are published on the Council's planning portal. The Council estimates that it would take 15 minutes to review each

document and therefore in total, the Council calculated that it would take 40 hours to provide all the information it holds within the scope of the request. This estimate does not include the time it would take the Council to collate and redact information falling within the scope of the request.

11. The Council considers that it would have to conduct further searches for information that is not published on the Council's planning portal. It considers that this would place a detrimental and unjustified burden on the Council as all information relating to the proposal to vary the obligation of a section 105 agreement is already within the public domain and therefore, all information within the scope of the request is in the public domain.
12. The Council considers that searching for and identifying information that is not relevant to the matter to be complex, time consuming and that it would take officers away from their normal duties. The Council stated that any information it holds within the scope of the request is likely to be subject to an exception. It considers that the process of redacting information within the scope of the request would be time consuming and put a strain on Council resources.

### **The Commissioner's position**

13. The Commissioner notes that the Council has stated that all information held within the scope of the request is already within the public domain on the Council's planning portal. However, the Council has also stated that it would have to carry out further searches for information held within the scope of the request which is not available on the Council's planning portal. The Council's position, therefore, appears to be contradictory.
14. If it is the case that the Council has already established that all the information it holds within the scope of the request is already available within the public domain on the Council's planning portal, the Commissioner does not consider that it would be necessary for the Council to carry out additional searches for information held within the scope of the request that is not published on the Council's planning portal.
15. If it is the case that the Council may hold further information within the scope of the request that is not available on the Council's planning portal, the Commissioner considers that the Council would need to conduct further searches for information held within the scope of the request. However, the Council has not provided the Commissioner with sufficient information to explain the searches that would need to be conducted or to convince the Commissioner that those searches would

place a detrimental or unjustified burden on the Council and its resources.

16. The Commissioner considers that as the Council has already identified the information available on its planning portal which falls within the scope of the request, it would not be necessary for the Council to review that information to check that it falls within the scope of the request. Even if it was necessary for the Council to review the information, the Commissioner does not consider that it would take 15 minutes to review each of 160 documents.
17. Furthermore, as the information available on the Council's planning portal which falls within the scope of the request is already within the public domain, the Commissioner does not consider that the Council would need to review that information to check that no exemptions apply or carry out redactions. This process should have already been carried out prior to the information being published on the Council's planning portal.
18. The Commissioner notes that the Council has stated that it would have to search for information which is not relevant to matter and that this would be complex and time consuming. The Commissioner does not accept this argument as it is not necessary for the Council to search for information which does not fall within the scope of the request.
19. The Commissioner considers that the Council has failed to demonstrate that the request is manifestly unreasonable and therefore, his decision is that exception provided by regulation 12(4)(b) is not engaged.

## Right of appeal

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20. 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)

21. 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.
22. 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 .....**

**Christopher Williams**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**