

**Freedom of Information Act 2000 (FOIA)**  
**Environmental Information Regulations 2004 (EIR)**  
**Decision notice**

**Date:** 31 May 2023

**Public Authority:** Hertfordshire County Council  
**Address:** County Hall  
Pegs Lane  
Hertford  
Hertfordshire  
SG13 8DQ

**Decision (including any steps ordered)**

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1. The complainant has requested information relating to Hertfordshire County Council's (the Council) Minerals and Waste Plan 2040. The Council refused to comply with the request under regulation 12(4)(b) of the EIR (exception for manifestly unreasonable requests).
2. The Commissioner's decision is that the Council is entitled to rely on regulation 12(4)(b) of the EIR to refuse to comply with the request.
3. The Commissioner does not require further steps.

**Request and response**

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4. On 27 October 2022, the complainant wrote to the Council to make the following request for information:

"Under the terms of the Freedom of Information Act, I hereby request the following information:

- 1) Details of all communications between the Minerals and Waste Planning Policy Team (and their previous council

named department), with Tarmac and City and Provincial in respect of the Minerals and waste Local Plans from 2014 to 2022 (current date)

- 2) Details of all communications between the Minerals and Waste Planning Policy Team (and their previous council named department), in respect of the site identified as Briggens Estate (identified as MAS01 in the latest version of the Minerals plan)
  - 3) Details of all communications between the Minerals and Waste Planning Policy Team (and their previous council named department), with EQ Communications or related PR Companies in respect of the Minerals and waste Local Plans from 2014 to 2022 (current date)
  - 4) Details of any meeting minutes or conversation transcripts in respect of any of the above"
5. The Council wrote to the complainant on the 27 October 2022, advising that the "request in its present form is quite extensive and would take considerable time to collate. You have asked for 'all communications', would it be possible to narrow your request, or be more specific in what you are asking for".
  6. The complainant responded on 28 October 2022, stating:

"Whilst I appreciate that it may take some time to collate, the requested information is fundamental for me to understand how the Minerals and Waste Policy Team came to their decisions, as detailed in the Minerals and Waste Plan Local 2040

I believe the ICO office suggest 20 days, but I am happy to extend this to say 30 days."
  7. The Council responded on 16 November 2022. It stated that it was refusing to comply with the request under regulation 12(4)(b) of the EIR.
  8. The complainant wrote to the Council on 17 November 2022 asking it to carry out an internal review of its decision to refuse to comply with their request.
  9. Following an internal review, the Council wrote to the complainant on 14 December 2022 maintaining its original decision.

## Scope of the case

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10. The complainant contacted the Commissioner on 21 December 2022 to complain about the way their request for information had been handled.
11. The Commissioner has therefore considered whether the Council is entitled to rely on regulation 12(4)(b) of the EIR to refuse to provide the requested information.

## Reasons for decision

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### Is the requested information environmental?

12. 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;
  - (d) reports on the implementation of environmental legislation;
  - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
  - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);

13. Although he has not seen the requested information, the Commissioner understands it is information relating to the Briggens Estate which is an area of land that has been selected by the Council as a preferred site for a future quarry. These are clearly measures affecting or likely to affect the elements and factors referred to in regulation 2(1)(a) or (c).
14. The Commissioner therefore finds that the information is environmental information, and that the Council was correct to consider it under the EIR.

### **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 guidance<sup>1</sup> on regulation 12(4)(b). In this case, the Council is citing regulation 12(4)(b) on the grounds that to comply with it would impose a significant and disproportionate burden on the Council's resources, in terms of time and cost.
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 information which would be disclosed before concluding whether the exception is applicable.

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

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 on the basis of cost, it should provide the requester with advice and assistance where reasonable to help them refine the request so that it can be dealt with within the appropriate cost limit. This is in line with the duty under regulation 9(1) of the EIR.
20. In its submissions to the Commissioner, the Council stated that the request was vast in what information was being requested and that it would take a great deal of officer time to collate the information, especially in respect of questions 1, 2 and 3 of the request. The Council explained that 1,600 possible emails had been identified and not all possible email inboxes had been checked. The Council also explained that it was also a consideration that, to correctly consider possible exceptions it would require the knowledge and expertise of the Minerals and Waste Planning Policy Team.
21. The Council explained that the request is for information which is essentially the core business of the Minerals and Waste Planning Policy Team, and consequently there will be masses of communications on the local plans.
22. The Council stated that the request is for documentation on both the current and previous plans. It explained that in 2014 work started on a new Minerals Local Plan, and in 2017 work started on a new Waste Local Plan. In December 2021 the Council agreed to withdraw these two emerging Plans and bring them together into a single Minerals and Waste Local Plan 2040 (the Plan). The Council stated that the Plan, which this request refers to, consists of 27 draft policies, as well as a Vision and Objectives, and over 60 supporting evidence base documents, as well as the policies in the withdrawn plans and their evidence base documents.

23. The Council went on to explain that the Briggens Estate is one site within the Plan and, in the course of preparing the Plan, hundreds of decisions are made regarding all aspects of it and on the supporting evidence base. Only a fraction of these will relate to the Briggens Estate.
24. The Council estimated that to comply with the request would exceed the 18 hour appropriate time limit as legislated under FOIA by a considerable margin.
25. The Commissioner acknowledges that it would take a large amount of time to locate, review and redact all of the information in order to comply with the request. He is therefore satisfied with the Council's explanation that going through the information in order to respond to this EIR request would impose an unreasonable burden upon it. Under the EIR, unlike under FOIA, public authorities are entitled to include the time taken to consider the application of exceptions when calculating the cost of compliance with an EIR request.

### **Public interest test**

26. 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.
27. The Commissioner recognises that there will always be a 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.
28. However, the Commissioner also recognises that this must be balanced against the impact that responding to the request would have on the public authority's ability to carry out its duties. The cost of providing a response in this case would be expensive and time consuming, to the point where it would be considered unreasonable under FOIA. He also notes that the Council already proactively makes core documents about the Plan available on its website, which goes some way to addressing the public interest in disclosure mentioned above.
29. Public authorities have limited resources and there is a strong public interest in them being able to protect those resources in order to carry out their wider obligations fully and effectively.
30. The Commissioner is therefore satisfied that the balance of public interest does not favour disclosure of the requested information in this case, and that the Council is therefore entitled to rely on regulation 12(4)(b) as its basis for not responding to the request.

## **Regulation 9 – advice and assistance**

31. 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.
32. The Council wrote to the complainant on 27 October 2022 about narrowing the scope of their request. However, the complainant did not reduce the request as they considered the information to be fundamental for them to understand how the Minerals and Waste Policy Team came to their decisions. The Council also advised the complainant in its response of 16 November 2022 to contact the Council to discuss what level of information would be available within a reasonable limit. However, the Council stated that the complainant did not contact the Information Access Team to discuss what information could be ascertainable without placing a burden on the Council and diverting its officers from their core duties.
33. The Commissioner's decision is that the Council did provide the complainant with adequate advice and assistance and therefore complied with regulation 9 of the EIR.

## Right of appeal

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34. 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)

35. 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.
36. 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 .....**

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**