

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 10 August 2023

Public Authority: Leeds City Council

Address: Civic Hall
Leeds
LS1 1UR

Decision (including any steps ordered)

1. The complainant has requested information about a consultation being conducted on behalf of Leeds City Council (the Council). The Council refused to comply with the request, citing regulation 12(4)(b) (manifestly unreasonable) of the EIR.
2. The Commissioner's decision is that the Council correctly engaged regulation 12(4)(b), and the balance of the public interest favours maintaining the exception.
3. The Commissioner does not require the Council to take any further steps.

Request and response

4. On 2 March 2023, the complainant wrote to the Council and requested information in the following terms:

"Under the terms of the Freedom of Information Act, and in connection with the consultation being carried out by Connecting Leeds on whether or not people want cycle lanes along the A660 from the junction of the A660 with Shaw Lane to Leeds University, a consultation which runs from the 30th January to the 5th March, please could you let me know:

1. Are two separate groups being consulted?
2. How many people are in each of these two groups?

3. What number of people have responded from each of the two groups?
 4. How much time on average is being spent by individuals on answering the online consultation questionnaire?
 5. What incentives are being provided to encourage people to complete the questionnaire?
 6. How many individuals have responded?
 7. What is the maximum number of questions possible for an individual to respond to?"
5. The Council responded on 30 March 2023. It stated that it was withholding the information at parts 1, 2, 3 and 6 in accordance with regulation 12(4)(d) (information in the course of completion) of the EIR, and confirmed that the information is due to be published on the Council website by summer 2023. The Council also stated that the information at parts 4 and 5 of the request is not held. Finally, the Council provided a link to the information being sought by part 7 of the request.
6. Following an internal review the Council wrote to the complainant on 11 May 2023. It stated that it considered that the request was manifestly unreasonable, and therefore amended its position to cite regulation 12(4)(b) of the EIR.

Reasons for decision

Is the requested information environmental?

7. 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) and (b) 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);
8. The Commissioner is satisfied that the requested information falls under the administrative measures described at regulation 2(1)(c), as the consultation which the request relates to is about proposed changes to a public highway. Therefore, the Council correctly considered this request in accordance with the EIR.

Regulation 12(4)(b) – manifestly unreasonable

9. Regulation 12(4)(b) of the EIR provides that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable.
10. The Commissioner's guidance¹ explains that the inclusion of the word "manifestly" means that there must be an obvious and clear quality to the unreasonableness of the request. The purpose of the exception is to protect public authorities from a manifestly unjustified, inappropriate or improper use of the EIR. The Commissioner therefore considers the key question that a public authority should consider is whether the request is likely to cause a disproportionate cost or burden, or an unjustified level of distress, disruption or irritation.
11. In this case, the Council relied on regulation 12(4)(b) to refuse to comply with the request on the grounds that it considered the request to be vexatious.
12. Following the lead of the Upper Tribunal in *Craven v Information Commissioner & DECC* [2012] UKUT 442 (AAC), the Commissioner considers that there is, in practice, no difference between a request that is vexatious under FOIA and one which is manifestly unreasonable under the EIR – save that the public authority must also consider the balance

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

of the public interest when refusing a request under the EIR. The Commissioner has therefore considered the extent to which the request could be considered to be vexatious.

13. The term "vexatious" is not defined within FOIA or the EIR. The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield* [2012] UKUT 440 (AAC). It commented that "vexatious" could be defined as the "manifestly unjustified, inappropriate or improper use of a formal procedure". The Upper Tribunal's approach in this case was subsequently upheld in the Court of Appeal.

The Council's position

14. The Council explained that it is currently considering the introduction of a cycle lane on the A660 in Leeds. As part of this proposal, the Council has undertaken a consultation exercise with members of the public in order to publicise the proposals and to understand their views on it. The consultation is being hosted by Commonplace – an online engagement platform - on behalf on the Council. The Council further explained that the complainant is an objector to the proposed scheme, and the request which is the subject of this decision notice is one in a series of requests containing many separate queries. The Council responded to several of those requests, alongside large volumes of general correspondence from the complainant outside of FOIA and the EIR, before considering it necessary to rely on regulation 12(4)(b) of the EIR to refuse to comply with the remaining related request, including this one.
15. The Council referred to the Commissioner's guidance² on vexatious requests, and set out that it considered the following indicators of vexatiousness to be applicable in this case:
 - unfounded accusations
 - burden – number/pattern of request making
 - lack of value and purpose of the request (reopening issues that have already been addressed)
16. The Council highlighted that the nature of the requests, along with general correspondence outside of the legislation, concerned the complainant disputing the results of the public consultation about the proposed cycle lane. The Council detailed that the complainant has suggested that respondents to the consultation may have been offered

² <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/dealing-with-vexatious-requests-section-14/>

an incentive by the Council, and that the same respondents, or bots, may have replied to the consultation multiple times in order to manipulate the outcome and give an untrue reflection of the public sentiment regarding the Council's proposals.

17. The Council explained that as part of their campaign against the cycle lane proposals, the complainant has challenged the legitimacy of the consultation due to the Commonplace board including an ex-Leeds City Council Councillor. The complainant has also claimed that the data processing relationship between the Council and Commonplace is not in accordance with contract and data protection law, so the consultation for the A660 cycle lane should be declared null and void.
18. The Council has endeavoured to address all of the complainant's concerns, even when unsubstantiated, and provided the Commissioner with an extensive bundle of correspondence to demonstrate its extremely voluminous communications with the complainant over a substantial period of time regarding the proposals for the A660. The Council also detailed that it has met with the complainant in person on several occasions to discuss concerns and ideas and attempt to collaborate constructively. A further in-person meeting was offered to the complainant in February 2023, however due to the nature of the correspondence at this point the Council determined that such a meeting would not serve to resolve any of the complainants concerns.
19. Prior to submitting the series of requests for information the complainant was also separately emailing various different officers across the Council raising the same repeated issues, and finally, made a deputation to Full Council regarding the A660 consultation, again re-raising many of the same addressed issues which then required officers to provide further responses.
20. The Council concluded that it sought to rely on regulation 12(4)(b) of the EIR due to the persistent nature of the complainants correspondence and the fact that the requests appear to only be concerned with challenging the validity of the consultation process, based purely on the complainant disagreeing with the proposals. The nature and volume of the complainant's correspondence had reached the point of having a serious detrimental impact on Council officers being able to undertake their core duties.

The complainant's position

21. The complainant argued that the proposals by the Council for the A660 would lead to queuing traffic on the dual carriageway, resulting in the already poor air quality becoming far worse.
22. The complainant further argued that the consultation regarding the proposals was biased in nature as it did not tell the public about the

Council's intention to queue traffic, despite it being an inevitable consequence of the proposed changes in the complainant's opinion. The complainant also stated that the consultation appears to have been mainly conducted digitally and via social media, so members of the public who don't have access to a computer or don't use social media weren't able to fully understand the proposed scheme. They also disagreed with the consultation being open to the general public of Leeds to put forward their views on the proposals, rather than just the individuals who would be directly impacted by any changes.

23. The complainant also objected to Commonplace's method of contacting its database of 30,000 engaged users (who had previously used the platform and provided their contact details) to inform them of the A660 consultation, arguing that to keep consulting the same people isn't true consultation.

The Commissioner's analysis

24. As detailed in the Commissioner's guidance, there are many reasons why a request for information can be considered to be vexatious. There are no prescriptive "rules", although there are generally typical characteristics and circumstances which assist in making a judgement about whether a request is vexatious.
25. The Commissioner's guidance emphasises that proportionality is a key consideration for a public authority when deciding whether to refuse a request as vexatious/manifestly unreasonable. The public authority must essentially consider whether the value of a request outweighs the impact that the request would have on the public authority's resources in responding to it. Ultimately, regulation 12(4)(b) of the EIR is designed to protect public authorities from having to respond to requests which would cause a disproportionate burden or unjustified level of disruption, irritation or distress.
26. The Commissioner has considered the arguments from both the Council and the complainant. He acknowledges that the complainant disagrees with the proposals put forward by the Council, and understands the concerns which they have raised. However, the Commissioner also recognises that the Council has endeavoured to address the complainants concerns about both the proposals and the consultation process over a lengthy time period, as demonstrated by the voluminous bundle of correspondence provided to the Commissioner for the purpose of this investigation.
27. It is clear to the Commissioner that the complainant's previous correspondence and requests for information on the matter of the A660 scheme have already placed a significant burden upon the Council, and compliance with further requests relating to the scheme would require

further public resources to be expended. Based on the correspondence provided to him, the Commissioner is satisfied that further responses from the Council would be highly likely to generate further related requests or general correspondence, thereby placing further burden upon the Council and impacting Council officers ability to undertake their core functions.

28. The Commissioner's guidance sets out that when considering whether a request is vexatious a public authority may take into account any evidence it has about the events and correspondence which preceded or led-up to the request being made. However, as long as the public authority responds to the request within the statutory 20 working day deadline, it may also take into account anything further than happens whilst it is dealing with the request, up to the point of providing the response. The Commissioner notes that whilst the Council was dealing with this particular request the complainant submitted 3 further related requests for information, each containing multiple queries, before the Council was able to provide its response to this request. The Commissioner is satisfied that this frequency/pattern of request making is in fact indicative of vexatiousness.
29. The Commissioner finds that the Council has demonstrated that the exception at regulation 12(4)(b) is engaged in this case, and has therefore gone on to consider the public interest test, as required by regulation 12(1)(b) of the EIR.

Public interest test

30. Regulation 12(4)(b) is subject to the public interest test. This means that where an exception is engaged, a public authority may still only refuse a request if the public interest in maintaining the exception outweighs the public interest in disclosing the information.
31. 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 in official decision-making.
32. The Council agrees that there is a public interest in the A660 scheme, including the consultation process, particularly to those residents and members of the public who would be directly impacted by the proposed changes. However, it is of the view that this particular request does not carry any further public interest.
33. The Council considers that it has sought to be as transparent and accountable as possible with the amount of information which it has already placed into the public domain, in both publicising its proposals and undertaking the consultation process, whereby any member of the

public was welcome to share their views on the matter. The Council considers that it has further met its transparency and accountability obligations and as such served the public interest, via the information it has previously provided in its vast dialogue with the complainant, both in responses to requests for information and in general correspondence.

34. The Council set out that it does not consider it to be in the public interest to continue to commit its valuable resources to respond to further requests, based on what it deems to be unfounded accusations. Responding to such requests would not serve to improve the public's access to, or understanding of, environmental information and the related issues and decision making. The Council therefore concluded that the public interest in maintaining the exception outweighs any public interest in disclosure.
35. The Commissioner notes that there is always a strong inherent public interest in allowing a public authority to protect itself, and whilst informed by the presumption in favour of disclosure provided for in regulation 12(2), the Commissioner's decision is that the balance of the public interest favours maintaining the exception in this case.
36. Having considered all circumstances of this case, the Commissioner concludes that the request was a "manifestly unjustified, inappropriate or improper use of a formal procedure", and the Council correctly applied regulation 12(4)(b) to refuse to comply with the request.

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

Amie Murray
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