

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

**Decision notice**

**Date:** 12 October 2023

**Public Authority:** Essex County Council

**Address:** County Hall  
Chelmsford  
Essex  
CM1 1QH

**Decision (including any steps ordered)**

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1. The complainant has requested information regarding transport and traffic management. Essex County Council ('the Council').
2. The Commissioner's decision is that the Council was partially entitled to rely on section 12 of FOIA to refuse to comply with most of the requests for information, however the information requested at paragraphs 7 and 10 is environmental and cannot be refused under FOIA.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation:
  - Provide a response which complies with the Environmental Information Regulations 2004 for the requests quoted at paragraphs 7 and 10.
4. The public authority 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

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5. On **17 May 2023**, the complainant wrote to the Council and requested information in the following terms:

"Please supply under FOI a list of all sites where Ugobus vehicles are parked overnight on a regular basis

Please also supply a list of all sites where Ugobus drivers report for work and sign on."

6. On **18 May 2023**, the complainant wrote to the Council and requested information in the following terms:

"Please advise under FOI:

- The current operator of local bus route 542
- The daily price paid for operating this route

Please also supply:

- Copies of all complaints received by ECC in respect of this route
- Copies of all correspondence between ECC and the current operator in respect of this route
- Copies of all internal ECC correspondence in relation to this route

In respect of the above, this should cover the period 1st January 2023 to the current date.

In addition, please supply details / copies of any internal policies, procedures and guidance in respect of ECC and specifically the IPTU taking contract management action against the operator of an ECC bus contract, including the early termination of a contract for breach of contract"

7. On **27 May 2023**, the complainant wrote to the Council and requested information in the following terms:

"I refer to the below planning applications made by Essex County Council to Chelmsford City Council:

- 23/00573/ful in respect of Sandon Park and Ride site
- 23/00574/ful in respect of Chelmer Valley Park and Ride site

Please advise:

- How much money has been spent with external consultants / professional advisors by ECC in connection with these applications, broken down both by supplier and individual piece of work
- How much was paid by ECC for the pre application meetings with CCC for each application

Please also supply:

- Copies of any minutes / notes / correspondence / outcome updates etc from the pre application meetings with CCC for each application
- Copies of any comments and objections received in respect of each application
- Copies of all internal ECC correspondence in relation to these applications, to include specifically all correspondence in relation to these applications involving any of:
  - Helen Morris, Head of IPTU
  - Rachael Price, Lead for Commercial Operations
  - [name redacted], Park & Ride"

8. On **29 May 2023**, the complainant wrote to the Council and requested information in the following terms:

"Please provide details of the corporate structure of Essex County Council, specifically the reporting structure from the head of IPTU upwards, including both officers and elected members."

9. On **31 May 2023**, the complainant wrote to the Council and requested information in the following terms:

"Please supply me with all email correspondence between any colleague at Essex County Council and the Office of the Traffic Commissioner.

For the avoidance of doubt, and to assist you in processing this request promptly and efficiently, I am only interested in emails that originate from an [@essex.gov.uk](mailto:@essex.gov.uk) email address and are addressed to an [@otc.gov.uk](mailto:@otc.gov.uk) email address - or vice versa.

Please cover the period from 1st August 2020 until 31st May 2023."

10. On **5 June 2023**, the complainant wrote to the Council and requested information in the following terms:

"Please supply copies of all correspondence between Essex County Council and Cadent Gas pertaining to the current closure by Cadent Gas of Crown Hill. In particular, please supply copies of all correspondence pertaining to the dates / times of the closure, the traffic management operations in place and any consideration given to the impact on local bus services."

11. On **9 June 2023**, the complainant wrote to the Council and requested information in the following terms:

"All correspondence between colleagues in the Integrated Passenger Transport Unit (IPTU) and The Office Of The Traffic Commissioner - @otc.gov.uk. Please look from the start of 2022 to the end of May 2023?"

12. On **12 June 2023**, the complainant wrote to the Council and requested information in the following terms:

I refer to the below document, and specifically table 54 on pages 131 and 132.

<https://www.essexhighways.org/uploads/downloads/ecc%20bsip%202021%20to%202026.pdf>

Please advise under FOI:

- Where the data was supplied from?
- How the figures were calculated?
- The reference date from which the figures were calculated
- How a company like Jetstream Tours, who operate boats, can be listed as an operator of local bus services?

Please also supply the most up to date version of this data, if you have it, and advise when the data is next due to be updated, if you don't have it to hand."

13. The Council responded on 15 June 2023. It stated that the information requested in the eight requests was exempt under section 12, section 42 and section 14.

14. Following an internal review, the Council wrote to the complainant on 5 July 2023. It stated that it was upholding its original position.

### **Scope of the case**

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15. The complainant contacted the Commissioner on 14 July 2023 to complain about the way their requests for information had been handled.
16. The Commissioner considers that the scope of his investigation is to consider whether the Council was entitled to rely on the exemptions cited to refuse the requests.

### **Reasons for decision**

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#### **Section 12 – cost of compliance exceeds the appropriate limit**

17. Section 12(1) states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
18. When considering whether section 12(1) applies, the authority can only take into account certain costs, as set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations'). These are:
  - (a) determining whether it holds the information,
  - (b) locating the information, or a document which may contain the information,
  - (c) retrieving the information, or a document which may contain the information, and
  - (d) extracting the information from a document containing it.
19. The applicable cost limit in this case is £450, which is equivalent to 18 hours' work.
20. Section 12 of FOIA makes it clear that a public authority only has to estimate whether the cost of complying would exceed the appropriate limit. It is not required to provide a precise calculation. The task for the Commissioner here is to reach a conclusion as to whether the cost estimate made by the Council was reasonable; in other words whether it estimated reasonably that the cost of compliance with the request would

exceed the limit of £450, that section 12(1) therefore applied and that it was not obliged to comply with the request.

21. 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 if the conditions laid out in regulation 5 of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations")<sup>1</sup> can be satisfied.

22. Section 12(4) of FOIA states:

"The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign, the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them."

23. Similarly, Regulation 5 of the Fees Regulations states:

"(1) In circumstances in which this regulation applies, where two or more requests for information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply, are made to a public authority –

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concern or in pursuance of a campaign, the estimated cost of complying with any of the requests is to be taken to be the total costs which may be taken into account by the authority, under regulation 4, of complying with all of them.

(2) This regulation applies in circumstances in which – (a) the two or more requests referred to in paragraph (1) relate, to any extent, to the same or similar information, and (b) those requests are received by the public authority within any period of sixty consecutive working days.

(3) In this regulation, "working day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a

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<sup>1</sup> <https://www.legislation.gov.uk/ukxi/2004/3244/contents/made>

bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

24. The Commissioner has reviewed the requests submitted to the Council between 12 May 2023 and 17 June 2023 by the complainant. He is satisfied that these requests were submitted by the same complainant and within 60 working days of each other, fulfilling the criteria at regulations 5(1)(a) and 5(2)(b).
25. The Commissioner must now consider whether these requests relate, to any extent, to the same or similar information. The Commissioner’s view on aggregating requests can be found in the guidance on requests where the cost of compliance exceeds the appropriate limit (see footnote 1 above).
26. Having reviewed the wording of the complainant’s requests, the Commissioner is satisfied that there is an overarching theme of local transport and transport/traffic management, in particular matters relating to Integrated Passenger Transport Unit (IPTU) and the Council (ECC).
27. The Commissioner is satisfied that the Council was entitled to rely on section 12(4) of FOIA to aggregate some of the requests, however the requests quoted at paragraphs 7 and 10 should have been dealt with under the Environmental Information Regulations 2004 (EIR). As these requests were not dealt with under the correct legislation, the Council will need to issue a new response to these requests.
28. For the requests which were appropriately dealt with under FOIA and section 12(4), the Commissioner will now go on to consider the cost of compliance.
29. The Commissioner asked the Council to provide an estimate for the costs of complying with the aggregated requests.
30. The Council explained that its initial assessment was carried out using its eDiscovery and focused only on three of the eight requests made. It advised it used the following key words “Sandon and Chelmer Valley Park and Ride” which located 555,430 files, “ Office of the Transport Commissioner” which returned 736 file and “Route 542” which returned 165 emails.
31. The Council advised that this would make a total of 556,331 emails, which would need to be manually reviewed for relevance. The Council advised that even if it took one minute to review one file, this would still equate to over 154 hours of work.

32. Based on the above, the Commissioner is satisfied that the Council was entitled to rely on section 12 when refusing the remaining requests, as complying with them would take significantly over the appropriate 18-hour limit and the cost limit.
33. As the Commissioner is satisfied that the requested information which falls under FOIA can be withheld under section 12(1), he does not need to consider the remaining exemptions applied.

## 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

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