

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 30 November 2023

Public Authority: Cheshire East Council
Address: Earle Street
Crewe
Cheshire
CW1 2BJ

Decision (including any steps ordered)

1. The complainant has requested information from Cheshire East Council ("the Council") about enquiries received by its public rights of way (PROW) team. The Council refused the request under regulation 12(4)(b) of the EIR (manifestly unreasonable) on the grounds that providing all of the information requested would impose a significant and disproportionate burden on the Council's resources, in terms of time and cost.
2. The Commissioner's decision is that the Council is entitled to refuse the request under regulation 12(4)(b). The Commissioner also finds that the Council complied with its obligations under regulation 9 of the EIR to offer advice and assistance.
3. The Commissioner does not require further steps.

Request and response

4. On 11 July 2023, the complainant wrote to the Council and requested information in the following terms:

"Can I request a breakdown of enquiries the PROW team have received for every footpath in the network from Jan 2022 to present date (excluding Bridleway, Restricted Byway, Byway Open to All Traffic) Broken down by Parish, Path Number, category/detail of issue.

Can I request a copy of each enquiry in PDF format."

5. The Council responded on 13 July 2023 and refused the request under regulation 12(4)(b) of the EIR (manifestly unreasonable) on the grounds that providing all of the information requested would impose a significant and disproportionate burden on the Council's resources, in terms of time and cost. It upheld this position at internal review.

Reasons for decision

Regulation 12(4)(b) - manifestly unreasonable requests

6. 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.
7. 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.
8. In the Commissioner's view, the key question for public authorities to consider when determining if a request is manifestly unreasonable is whether the value and purpose of the request justifies the burden that would be placed upon the authority in complying with it.
9. 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, such as the Council, is £450, calculated at £25 per hour. This applies a time limit of 18 hours. Where the authority estimates that responding to a request would exceed this limit, it is not under a duty to respond to the request.
10. 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 section 12 limits 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.

11. The Council provided the following information about how it has estimated the time it would take to comply with the request:

"...our Public Rights of Way (PROW) team received 685 online path problem report forms in 2022-23, amongst 2,124 emails, plus letters and phone calls.

Whilst the requester excluded Bridleways, Restricted Byways and Byways Open to All Traffic from their request, Footpaths form the majority of the PROW network, we feel it is reasonable to base our sampling exercise on these figures.

Path problem reports are logged within the team's mapping and database software "CAMS" (Countryside Access Management System), having been reported by the public, landowners or Officers.

It should be noted that not all of the daily enquiries that the team receives and responds to by telephone, email, letter, web enquiry form and in person are logged on the CAMS system. Many issues are resolved without the need for them to be logged on the CAMS system and issued to contractors for remedy.

Therefore, we cannot extract the information requested in the first part of the request using a database query. Officers would need to manually trawl through [sic] each individual enquiry to extract the relevant information and to tabulate in the requested breakdown.

To satisfy the second part of the request, we would have to prepare [sic] each enquiry for public disclosure. This would involve converting each enquiry to pdf, reviewing and redacting information that fall under an exception. Regulation 13 (personal data) is likely to apply to some parts of each enquiry. This is not only limited to the specified fields and easy to locate but could be contained in photographs or descriptions within free text fields.

Using a conservative effort of 2 minutes per enquiry, we estimate that to tabulate the records into the breakdown requested, and to provide copies of the records would approximately 93 hours (2,809 enquiries x 2 minutes)."

12. The Council confirmed that this estimate was based on the quickest method of gathering the information requested and provided a sample of the type of information held.

13. The Commissioner notes that the complainant believes complying with the request would not be as burdensome as claimed by the Council for the following reasons:

“The council use a system to manage all their highways defects. I do not believe it will take 18hrs for an export to take place on this system of reports received online on Public Right Of Way issues. As a resident the Public Right of Way issues and reported through a separate web form from any other council issue, therefore all information will be stored in one place. On receipt of reporting an issue the user is emailed a unique FS reference number. Therefore confirming all this information is on a system and could be easily exported by the system administrator.”

14. While this view does appear to be based on reasonable assumptions about how the Council could locate the information requested, the Commissioner considers that, taking in to account the information provided by the Council about how the information is stored (as quoted in paragraph 11 of this notice), some degree of manual search would be required.
15. It is also important to note that, although not permitted under FOIA, the Commissioner’s guidance¹ is clear that the costs of considering if information is covered by an exception can be taken into account as relevant arguments under regulation 12(4)(b) of the EIR. As part two of the request is for a copy of enquiries received, the Commissioner accepts that the Council would need to spend time considering which information given within the enquiries is personal data that should be withheld under regulation 13 of the EIR.
16. For the reasons above, the Commissioner considers the estimate provided by the Council to be reasonable.
17. The Council’s estimate of 93 hours far exceeds the time limit of 18 hours which serves as an indication of a reasonable burden to respond to an EIR request. Even taking in to account the fact that the Council’s estimate is based on enquiries relating to all types of PROW (including those excluded from the request in the wording of the request), given that footpaths form the majority of the PROW network the Commissioner is satisfied that the Council has demonstrated that the

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

time it would take to comply with the request is likely to considerably exceed the 18 hours.

18. The Commissioner therefore concludes that regulation 12(4)(b) is engaged; this is because he is satisfied that responding to the request would create a disproportionate burden upon the Council.
19. However, under the EIR, if regulation 12(4)(b) is engaged, the Commissioner must still consider whether the public interest rests in favour of the request being responded to in spite of the fact that the exception is engaged. The test is whether, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
20. When carrying out the test, regulation 12(2) requires a presumption towards the disclosure of the information.

Public interest test

21. The Council acknowledged that there is always a public interest in disclosure to promote transparency and accountability, greater public awareness and understanding of maintenance of the PROW network, which will ultimately contribute to a better environment. It also acknowledged the presumption in favour of disclosure under regulation 12(2) of the EIR.
22. The Council took the following public interest arguments in favour of maintaining the exception in to account:
 - “The length of the PROW network in Cheshire East is 1,952km. The aim of the Public Rights of Way team is that the Public Rights of Way network is kept available and easy to use, and free from obstructions, in order to fulfil statutory duties and deliver health and wellbeing, social, economic and environmental benefits.”
 - “There is a considerable public interest in the effective use of Council resources. Responding to this request would be so burdensome that the limited resources of the PROW team would need to be diverted from their core duties, to concentrate on locating, extracting, and collating the information held.”
 - “It is not in the public interest to divert resources away from the PROW team, whose work is vita [sic] to the Cheshire East landscape and environment. The work of the Public Rights of Way team also encourages a reduction in carbon emissions and increased environmental sustainability by reducing energy consumption and promoting healthy lifestyles through active travel.”

- “The public interest in this information is partially satisfied by the annual reports presented to the Rights of Way Committee of the Council.”

23. The Council provided the following information about why it considers that on balance the public interest in maintaining the exception outweighs that in disclosing the withheld information:

“Whilst we acknowledge the public interest in disclosure of environmental information, we do not consider that this public interest is substantial enough to justify the impact that would be imposed by responding to the request.

The council has limited resources and it is within the public interest that these resources are protected, enabling us to carry out our wider obligations fully and effectively for the benefit of the wider public. This is especially important in this case, where the PROW team are providing a service that which will ultimately contribute to a better environment.

Beyond the applicant’s interest in this information, it is not clear that there is any broader public interest in the information being disclosed. The Council does not need to readily access information in the requested format to meet its statutory obligations, and the public interest is partially satisfied by the annual reports presented to the Rights of Way Committee of the Council.”

24. When making their complaint to the Commissioner the complainant did not provide any arguments relating to the public interest in the disclosure of the information.
25. In this case, having considered the above, the Commissioner is satisfied that the public interest lies in the exception being maintained.
26. The central public interest in the exception being maintained relates to preserving the Council’s resources. It is not in the public interest to require an authority to respond to a disproportionate request which places a significant burden on it, but which would not provide information of significant value to the public.
27. Even where a request would provide information of value to the public, it is not in the public interest to require the authority to fully respond to the request where it would cause such a burden on the authority that this would significantly affect its ability to carry out its other functions.
28. The Commissioner is therefore satisfied that the Council was entitled to rely on regulation 12(4)(b) to refuse the request.

Regulation 9 – the duty to provide advice and assistance

29. Regulation 9 of the EIR requires public authorities to provide advice and assistance to requestors, so far as it would be reasonable to expect the authority to do so.
30. As stated in the Commissioner's guidance², in cases where a public authority refuses a request under regulation 12(4)(b) as manifestly unreasonable because of burden or cost, the Commissioner normally expects it to provide the applicant with reasonable advice and assistance to help them submit a less burdensome request.
31. In this case the Council advised the complainant in its initial response, "In this case, the request could be potentially refined by submitting one that is constrained to a specific geography, i.e. a particular Public Right of Way in a specific parish. If you have specific questions, we will also be happy to consider those."
32. The Commissioner is therefore satisfied that the Council complied with its obligations under regulation 9 of the EIR to offer advice and assistance.

² <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/regulation-9-advice-and-assistance/#regulation9>

Right of appeal

33. 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

34. 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.
35. 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
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