

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 3 November 2023

Public Authority: Fareham Borough Council
Address: Civic Offices
Civic Way
Hampshire
PO16 7AZ

Decision (including any steps ordered)

1. The complainant requested information from Fareham Borough Council ("the Council") relating to the regeneration of Fareham Town Centre.
2. The Commissioner's decision is that the Council is not entitled to rely on regulation 12(4)(b) (manifestly unreasonable) of the EIR to refuse to provide the requested information.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the request which 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 Act and may be dealt with as a contempt of court.

Request and response

5. On 19 July 2023, the complainant requested the following information from the Council (numbering added by the Commissioner):

"I am writing to you to request information about:

Consideration of commercial opportunities related to wider regeneration of Fareham Town Centre Agenda Item 9(1) Executive.

I note that this Council is once again defaulting to the FOI exemption from disclosure option,

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

Explanation of Reasons

- By Virtue of Paragraph 3 Information relating to the financial or business affairs of any particular person (including the authority holding that information)

rather than considering whether or not a suitably redacted version might better serve the needs for transparency and the public interest.

To claim that this item should be completely exempt from public disclosure is totally inappropriate.

It seems likely, but the public don't know, that councillors are being invited to sign up to the expenditure of more public money whilst underwriting the costs involved.

As an absolute minimum they should know:

1. What the regeneration opportunities consist of?
2. How much they will cost?
3. How they will be paid for?
4. The impact of these costs on the public through a need for the Council to introduce new ways of raising income (stealth taxes)?
5. What the environmental impact might be?

My FOI request therefore is for the five questions above to be answered.”

6. The Council refused to provide the information requested in parts 1 – 4 of the request citing section 14(1) of FOIA as its basis for doing so. It also refused to provide the information requested in part 5 of the request citing regulation 12(4)(b) (manifestly unreasonable) of the EIR.

Reasons for decision

7. Whilst the Council has handled parts 1 – 4 of the request under FOIA, the Commissioner considers the requested information to be environmental as defined in regulation 2(1)(c) of the EIR. Regulation 2(1) of the EIR defines environmental information as being any information on:

“(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.”

8. The Commissioner considers the regeneration of Fareham Town Centre to be a measure likely to affect the environment. As the information requested in parts 1 – 4 of the request relates to that measure, the Commissioner considers that information to be environmental. Therefore, the Commissioner is of the view that the Council should have handled the entirety of the request under the EIR.
9. This reasoning therefore covers whether the Council is entitled to rely on regulation 12(4)(b) to refuse to provide the requested information. Whilst the Council relied on section 14(1) when handling this request under FOIA, regulation 12(4)(b) can apply where a request is vexatious and so the Commissioner considers it appropriate to consider that provision here.

The complainant's position

10. The complainant considers that disclosure of the requested information would be in the public interest as the information relates to the spending of public funds by the Council. Furthermore, the complainant considers that the Council would hold the requested information in a readily accessible format and so it would only take the Council a short amount of time to provide the information. Therefore, the complainant does not consider their request to be manifestly unreasonable.

The Council's position

11. The Council considers the request to be manifestly unreasonable. In its submissions to the Commissioner, the Council stated that since 19 August 2020, the complainant has made 20 information requests. Six of those requests have been made since 1 April 2023.
12. The Council stated that dealing with the complainant's requests has resulted in a large volume of work for Council officers. As well as responding to each request, Council officers have had to respond to follow up queries from the complainant, carry out internal reviews, and deal with complaints made to the ICO by the complainant. Furthermore, the Council explained that as it can be difficult to identify when information is being requested and when the complainant is simply stating their opinion, it is often necessary to seek clarification from the complainant. The Council estimates that officers would have likely spent weeks dealing with the complainant's requests and correspondence relating to those requests. It considers that this would have impacted officer ability to carry out other duties.
13. The Council explained that when dealing with the complainant's requests, input is usually required from senior Council officers such as relevant Heads of Service, the Director of Planning and Regeneration, the Finance Manager and the Procurement Manager. This can involve technical discussions to determine whether the requested information is held and to consider the public interest test when necessary.
14. The Council explained that as well as submitting multiple information requests, the complainant also contacts Ward Councillors to ask questions and to seek their opinions and explanations. The complainant also contacts the Chief Executive Officer and Councillors to complain about the Council's spending, income and related decisions. The Council explained that the Chief Executive Officer has previously offered to meet or speak with the complainant in an attempt to understand and resolve their concerns. However, the complainant did not accept this offer.
15. The Council stated that all of the complainant's requests centre around the Council's finances. Some of the requests are very focussed on the Council owned Solent Airport, its finances and the wider Daedalus site. Other requests focus on large projects where the Council spends and invests money to generate income. The Council considers that it has taken every opportunity to be helpful to the complainant such as answering questions which have not been for recorded information.
16. The Council explained that whilst the complainant's correspondence is never rude, the tone of more recent correspondence is challenging and the complainant appears to be frustrated. The Council considers that the

complainant is using their requests to pursue an unknown grievance and that they would not be satisfied unless all information requested is provided.

17. The Council stated that at the time the request was made, the Council was nearing the final stages of negotiations and associated work relating to the acquisition of the Fareham Town Centre Shopping Centre. Therefore, the Council considers that complying with the request would have placed an unjustified burden on Council officers as it was likely that at least some of the requested information would be made public. However, at that point, the Council had not determined which information would be publicly disclosed. The Council also considers that if it were to comply with the request it is highly likely that at least some of the requested information would be exempt from disclosure as the complainant has requested information relating to a confidential commercial matter and negotiations.
18. The Council accepts that there is a strong public interest in how decisions are made and how the Council spends public money. However, it considers that complying with the request would prevent Council officers from carrying out other duties and services which would not be in the public interest. Therefore, it has determined that the request is manifestly unreasonable.

The Commissioner's position

19. The Commissioner recognises that the complainant has submitted a large number of information requests to the Council. He also recognises that dealing with those requests and correspondence relating to the requests would be time consuming and impact Council officer's ability to carry out other duties. However, the Commissioner considers that as the complainant's requests were made over a long period of time, they would not have placed an unreasonable burden on the Council.
20. The Commissioner has reviewed correspondence between the complainant and the Council. Whilst he notes that the complainant often challenges the actions of the Council in their correspondence, the Commissioner is of the view that the Council should expect a certain amount of scrutiny from the public.
21. Furthermore, whilst the Council has stated that the complainant contacts Ward Councillors, Councillors and the Chief Executive, it has not provided the Commissioner with sufficient evidence to demonstrate that this correspondence has placed an unreasonable burden on the Council.
22. The Commissioner considers the Council has failed to demonstrate that the request is manifestly unreasonable. Therefore, his decision is that

the Council is not entitled to rely on regulation 12(4)(b) of the EIR to refuse to provide the requested information.

Other matters

23. Whilst the Commissioner has concluded in this case that the Council is not entitled to rely on regulation 12(4)(b) of the EIR to refuse the request, if the complainant were to make further requests which are similar in nature and frequently in the future, the Council could consider applying regulation 12(4)(b) to those requests. However, it would need to demonstrate that any such request was manifestly unreasonable.

Right of appeal

24. 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

25. 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.
26. 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

Ben Tomes
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF