

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 1 February 2024

Public Authority: Shropshire Council
Address: Shirehall
Abbey Foregate
Shrewsbury
SY2 6ND

Decision (including any steps ordered)

1. The complainant has requested from Shropshire Council (the Council) information relating to traffic concerns about Red Deer Road Shrewsbury. The Council refused the request and cited regulation 12(4)(b) (manifestly unreasonable) of the EIR.
2. The Commissioner's decision is that the Council is not entitled to rely on regulation 12(4)(b) of the EIR to refuse to comply with the request.
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 10 July 2023 the complainant requested information under the FOIA of the following description:

"Traffic concerns: Red Deer Road, Shrewsbury

In regard to the traffic issues experienced on Red Deer Road in Shrewsbury, [name redacted] sent the following email on 6 February 2023. I understand you were required to conduct a review into the development and the matters of concern being raised by residents.

"Thanks you for your message. We are collating contributions from a range of residents and a summary response will be circulated soon."

After five months, the residents have heard nothing and my offers to contribute to the 'collation' being undertaken have all been ignored, as has my offer to meet on site to discuss the problems. My understanding is that other residents have also been ignored, which calls into question whether Shropshire Council (SC) is acting in a genuine capacity, and on behalf of those affected by the consequence of road design enabling speeding and bad parking etc. The latest incident of course being a recent road traffic accident involving all three emergency services.

FOI request

In the absence of any acknowledgement or response from [name redacted] on this matter, can you please provide me with all contributions collated 'from a range of residents' together with any additional documents accumulated as part of the 'investigation'."

6. On 8 August 2023 the Council responded, providing the Commissioner with background information to the request, and also to illustrate the scale of the work that would have been involved in collating contributions from residents about the traffic issues relating to Red Deer Road area. The Council explained:

"There have been a number of schemes in this general area. Shropshire Council received representation and comments from interested parties in relation to traffic about all the schemes. Comments were sent to a variety of teams. Responses were provided directly on an individual basis and not collated centrally at the time.

Searching for all relevant emails relating to Red Deer Road would have involved multiple members of staff and possible search criteria would have been wide, it not referencing that particular road. In addition, searches for Red Deer Road would bring up multiple correspondence unrelated to the consultation referenced in the request. These schemes include:

- The potential closure of Crowmeole Lane, which is adjacent to Red Deer Road and therefore provides an alternative vehicular route. Please refer to the following link; [Crowmeole Lane point closure | Shropshire Council](#)
- Public engagement with regard to the "Meole Project Scheme" which included improvements along Bank Farm Road, which is located to the east of Red Deer Road [Shropshire Council awarded over £600,000 of active travel funding - Shropshire Council Newsroom](#)
- Through funding by Shropshire Council and the Department for Education, A new primary school and SEND school have been constructed at Bowbrook, Shrewsbury. The schools are accessed via two vehicular routes, one of those is Red Deer Road. The construction of the two schools were subject to planning approval and comment by interested parties. The project was overseen by a number of Shropshire Council departments, these include Shropshire Councils Estates, Shropshire Council Education and Achievement, Development Management and Shropshire Council as Local Highway Authority. Please refer to the link below for further details; [Delight as new primary school opens its doors for first ever pupils this week - Shropshire Council Newsroom](#)
- In addition to the above schemes, Shropshire Council as Highway Authority have overseen the adoption of Red Deer Road, as Highway maintainable at the public expense. The maintenance of the roads, footways and street lighting within the site transferred through a Section 38 Agreement under the Highways Act 1980 from Barratt Homes and are now the responsibility of Shropshire Councils Environmental Maintenance section, to include Highways Maintenance team, Street scene, Parking services, Streetworks and Traffic Engineering. Correspondence regarding Red Deer Road would be directed to the relevant department depending on the enquiry.

- The roads, footways and street lighting within the wider Bowbrook development to the north of Red Deer Road, to include Squinter Pip Way are not yet adopted by Shropshire Council and remain under the control of Barratt Homes. Despite the road not being subject to any legal agreement, Shropshire Council have received representation with regard to issues relating to parking and speeding along the unadopted sections of the development. It is understood the road traffic accident involving all three emergency services, [the complainant] refers to within his correspondence occurred on Squinter Pip Way. Correspondence received regarding the unadopted section would also need to be searched for reference to Red Deer Road.”
7. With regard to the actual request for information; “contributions collated” the Council stated that an ‘investigation’ had not been carried out yet, therefore no information had been collated for this. The Council said this information is not held, and explained that at the time of the request, comments from residents had not been collated.
 8. The Council maintained that to search relevant email accounts in order to respond to the request, would take a considerable amount of staff time. Therefore, it considered to respond to this request in full, is manifestly unreasonable and exempt from disclosure under regulation 12(4)(b) of the EIR.
 9. On the same day the complainant requested “a review of the failure by SC to respond to my FOIA request...”
 10. On 12 August 2023 the Council provided its review response and upheld its original position. However, the Council stated it had not said the information is not held, it emphasised that it said the information is not currently collated.

Reasons for decision

11. This reasoning covers why the Council is not entitled to rely on regulation 12(4)(b) of EIR to refuse to comply with the request.

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

12. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose environmental information to the extent that the request is manifestly unreasonable. In this case, the Council cited regulation 12(4)(b) on the grounds that to comply with it, would impose a significant and disproportionate burden on its resources, in terms of time and cost.

13. Under FOIA, the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') specify an upper limit for the amount of work required beyond which a public authority is not obliged to comply with a request. This is set at £450 for public authorities such as the Council.
14. The Fees Regulations state that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it;
 - and extracting the information from a document containing it.
15. The EIR differ from FOIA in that under the EIR there is no upper cost limit set for the amount of work required by a public authority to respond to a request.
16. While the Fees Regulations relate specifically to FOIA, the Commissioner considers that they provide a useful point of reference where the reason for citing regulation 12(4)(b) of the EIR is the time and costs that compliance with a request would expend as is the case here. However, the Fees Regulations are not the determining factor in assessing whether the exception applies.
17. Regulation 12(4)(b) sets a robust test for a public authority to pass before it is no longer under a duty to respond. The test set by the EIR is that the request must be "manifestly" unreasonable, rather than simply being "unreasonable".
18. The Commissioner considers that the term "manifestly" means that there must be an obvious or clear quality to the identified unreasonableness. It should also be noted that public authorities may be required to accept a greater burden in providing environmental information than other information.
19. The information in this case relates to Red Deer Road, Shrewsbury and its traffic concerns i.e. additional highway improvements/developments. The Council's actions in this respect would have an effect on the environment. The Commissioner, therefore agrees the requested information is environmental and that the Council was correct to handle the request under the EIR.

The complainant's position

20. The complainant provided the Commissioner with details leading up to his request for information, along with his argument against the Council's position. The complainant said he requested a site visit from the Council to discuss traffic issues for where he lives. The Council stated that "work was in progress to collate contribution from a range of residents".
21. The complainant subsequently requested the information stated to have been in progress of collation on the date quoted, and the Council refused the request as it considered it to be manifestly unreasonable. The complainant clarified that his request was for:

"all contributions collated 'from a range of residents' together with any additional documents accumulated as part of the 'investigation'. I do not request information already provided."
22. The complainant described what his interpretation of the term 'work was in progress to collate contribution from a range of residents' to be information which included email complaints, letters and web site enquiries from individuals on matters of parking, speeding and road safety of [address redacted] and [name of developments redacted]. He said the Council confirmed it holds that information. He also believes such 'contacts' sent to the Council "must by implication, need to be categorised by allocation to an Officer, and therefore reasonably easy to collate."
23. The complainant strongly refutes his request to be 'manifestly unreasonable'. He said he "cannot accept that requesting information clearly stated to be being collated for the organisations own purposes can ever be considered as 'manifestly unreasonable'."

The Council's position

24. The Council informed the Commissioner it had advised the complainant in February (prior to this request), that there was an intention to collate contributions from a range of residents in relation to traffic issues in the location of Red Deer Road. The Council explained that this was not carried out and at the time of the request, it had not been started. It advised the complainant that this work had not been carried out as intended, and said "in order to fulfil the request, the work would have to be commenced. And that due to the amount of information to trawl through, this was anticipated to take over 18 hours." The Council added, that although this figure is not cited in the EIR, it is used as a guide for considering the amount of time a request would take to respond to.

25. The Council set out to the Commissioner, the work that would have been involved in order to comply with the request. This is included within the background information at the start of this decision notice.
26. In responding to the request, the Council said it considered only the diversion of resources and the impact on the authority. It did not deem the request as being vexatious at the time it was received or as part of the internal review.
27. The Council said that correspondence, with regard to various matters raised in the area around Red Deer Road, had been received by different departments within the Council. It stated numerous officers across several departments would have been involved, and all those resources diverted from service delivery would be in excess of 18 hours. Therefore, the Council maintained its position that the complainant's request is 'manifestly unreasonable', and is likely to cause a disproportionate cost or burden to the Council.
28. The Council responded to the complainant's argument – that because the Council was undertaking the collation of the information for our own purpose, we cannot consider it to be 'manifestly unreasonable' – "overlooks the fundamental point of our original response – the collation of the information requested had not been undertaken as intended." The Council further explained that the undertaking was an intention, but the work was not started. The Council reiterated that it has not undertaken this work and therefore, the information is not held, even in part, at this time. It said, it would have had to have started the work from scratch in order to provide the information.
29. During the Commissioner's investigation and for the avoidance of doubt, the complainant was asked to clarify the information he is seeking and information which he considers to be outstanding. The complainant's clarification and his arguments were put to the Council, and in its response to the Commissioner, the Council said the complainant is still confusing "work that was intended to be done" with the fact that the work was never carried out as had been intended. Therefore, the Council considers the complainant's arguments for disagreeing with it, are still not valid. The Council confirmed the following:
 - "Emails/comments from people about issues around changes to roads in this area were never collated. So the collated information is not held.
 - This work has not been started and there is no intention to do this for council business purposes.

- In order to respond to the request, the work would have to start from scratch. There are lots of emails to go through across many individuals and several teams and this is estimated to be well over 18 hours. Therefore to do the work in order to meet the demands of the request is considered to be manifestly unreasonable.”
30. For the reasons above, the Council deems that it is entitled to consider the amount of time it would take to carry out this work to be able to respond to this request. The Council referred the Commissioner to its explanation and confirmed that this would have been a significant undertaking.

The Commissioner’s decision

31. The Commissioner considered the arguments by both the complainant and the Council. He acknowledges the complainant’s interests on the traffic issues experienced on Red Deer Road, and understands his concerns about them. The Commissioner also notes the Council’s explanation, it confirmed to him “that the intention had been to collate the information but this has not been commenced to date.” It also confirmed “that if the information is collated, it will be published in some form. However, there are no plans to do this.”
32. The Commissioner recognises the difficulty, which the Council stated, “was the number of projects in the area and therefore, the number of people potentially involved and the amount of information this would generate e.g. there had been no central email address for comments; the comments were sent to various teams; there are several interlinked projects and other work in this area due to the amount of development and they were all interlinked. Because of the search terms that would need to be used, it would return a large amount of data and much of that would be unrelated to the request.”
33. The Commissioner notes the Council had reiterated the complainant’s reason for disagreeing with its use of the exception, which was that he believed the information had been compiled. Therefore, the Council deemed the complainant was not disagreeing with the exception, but that he believed the information was available already. The Council confirmed that this was an intention but the work had not been carried out, and considered the complainant’s argument was flawed.
34. Having reviewed the Council’s submissions, the Commissioner is not persuaded that the anticipated amount of time it would take to carry out the work to respond to this request, would have been a significant undertaking. He is also not persuaded any diversion of resources would have a considerable impact on the Council’s other functions.

35. Without details of how the Council estimated over 18 hours to search through the information, the Commissioner cannot make an assessment of whether the estimation is robust, or relevant. A list of potentially relevant schemes does not quantify the time required to identify information held within scope of the request. Therefore, the Commissioner considers the Council has failed to demonstrate the request would impose a significant burden on its resources.

Conclusion

36. The Commissioner's decision, is the request is not manifestly unreasonable, and in view of this, the Council is not entitled to rely on regulation 12(4)(b) of the EIR 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

Joanna Marshall
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