

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 27 February 2024

Public Authority: Newcastle Under Lyme Borough Council

Address: Civic Offices
Merrial Street
Newcastle
Staffordshire
ST5 2AG

Decision (including any steps ordered)

1. The complainant has requested information relating to exposure to hydrogen sulphide (H₂S). Newcastle Under Lyme Borough Council (the Council) refused the request, citing regulation 12(4)(b) of the EIR (manifestly unreasonable) as its basis for doing so, on the grounds that to comply with the request would incur an unreasonable burden on its resources.
2. The Commissioner's decision is that the Council was entitled to rely on regulation 12(4)(b) to refuse the request.
3. The Commissioner does not require further steps.

Request and response

4. On 5 July 2023, the complainant wrote to the Council and requested information in the following terms:

"In particular I would like you to address the characteristic of H₂S that prolonged exposure causes Olfactory Paralysis as per this segment. 'In humans, inhalation of hydrogen sulfide at as low as 100-250 ppm for only a few minutes can result in incoordination, memory and motor dysfunction, and anosmia (so-called olfactory paralysis). Symptoms become more severe with longer exposure and sometimes lead to pulmonary edema.' (sic)

- 1) What discussions have you held with any other agency about the symptoms and effects of H₂S?
- 2) What was the outcome? Were any policy documents created?
- 3) What records or documents do you hold where Olfactory Paralysis is discussed?
- 4) What records or documents do you hold where H₂S exposure and Pulmonary Oedema is discussed?."

5. The Council responded on 1 August 2023, stating that:

- It was withholding information from part one of the request under sections 30(1)(a) and 30(2)(c) (investigations and proceedings conducted by public authorities) and 31(1)(c), (e) and (g) (law enforcement) of the Freedom of Information Act (FOIA);
- No information was held in relation to part two of the request; and
- It was applying section 12 (cost limits) of FOIA to parts three and four of the request.

6. At internal review the Council upheld its response but also stated that regulations 12(4)(b) (manifestly unreasonable), 12(4)(e) (internal communications) and 12(5)(b) (course of justice) of the EIR may apply.

Scope of the case

7. The Commissioner considers that, given the nature of the information being requested, it constitutes environmental information as defined in regulation 2(1) of the EIR. He therefore asked the Council to reconsider the request under the EIR.
8. Having done so, the Council refused the request, citing regulation 12(4)(b) (manifestly unreasonable) as its basis for doing so, on the grounds that to comply with the request would incur an unreasonable burden on its resources.

9. The scope of the case is to consider whether the Council was correct to rely on regulation 12(4)(b) to refuse the request.

Reasons for decision

Is the requested information environmental?

10. The requested information concerns emissions and potential exposure to a hazardous chemical. As such, the Commissioner is satisfied that the information sought is environmental information under regulation 2(1)(b) and 2(1)(f) of the EIR.

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

11. Regulation 12(4)(b) states that a public authority can refuse to disclose information in response to any request that is manifestly unreasonable.
12. The Council is relying on regulation 12(4)(b) on the grounds of burden. When refusing a request on the grounds of burden, the Commissioner expects a public authority to provide a reasonable estimate as to how long compliance with the request would take. This estimate should be based on the quickest method of retrieving any relevant information. In most cases, this estimate requires the public authority to conduct a sampling exercise.
13. 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 will exceed this limit, section 12(1) of the FOIA provides an exclusion from the obligation to comply with the request.
14. 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 equivalent figures 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.
15. The Council stated that a search was carried out by its ICT team, using specific keywords such as hydrogen sulphide, H₂S, effects and symptoms.

16. It went on to say that " ... searches were carried out of both document filing systems and officers' email accounts. Some emails included attachments which contained the keywords searched for."
17. The Council confirmed that the number of emails alone discovered by the keyword search was 12,315.
18. A sampling exercise of 30 emails, 18 of which contained attachments, was carried out in order to provide an estimate of the time which would need to be taken by Council officers in order to respond to the request. The Council determined that it would take five minutes to review each email.
19. The Commissioner has gone on to consider the number of emails located and, given that number, if the search parameters used to locate information falling within the scope of the request were too wide.
20. Within the request the complainant is asking for information specifically relating to the symptoms and effects of hydrogen sulphide (H₂S). The Commissioner therefore considers it reasonable that these words were included in the search because, to leave them out, would likely not locate all the information being requested by the complainant.
21. It was confirmed by the Council that single keywords alone were not the only search parameters used. Searches using combinations of the keywords, including for example, 'symptoms of H₂S' and 'effects of hydrogen sulphide', were also carried out.
22. The Commissioner considers that by using both individual keywords, and combinations of those keywords, the Council has carried out reasonable searches to locate information falling within the scope of the request.
23. The Council has confirmed that this request relates to ongoing issues about emissions from a landfill site. The emissions and the site are part of on-going concerns for both the Council and third party agencies. It is feasible therefore that the Council would hold a large amount of information regarding these matters.
24. However, the Commissioner is sceptical that it would be necessary to search over 12,000 emails in order to comply with what is a narrowly defined request. In particular he is concerned that searching for a commonly occurring word like 'effects' alone is likely to have captured numerous emails which there was no good reason to expect were within the scope of the request. He also considers five minutes to review each email to be an over estimate of the time necessary for most emails just to establish whether they were within the scope of the request.

25. However, even allowing for this by reducing both the number of emails it would be necessary to search, and the time necessary to spend reviewing each email by three quarters would still produce an estimate far in excess of the appropriate limit of 18 hours ($3000 \times 1.25 \div 60 = 62.5$ hours).
26. The Commissioner therefore concludes that regulation 12(4)(b) is engaged; this is because he is satisfied that responding to the request would create an unreasonable burden upon the Council and hence the request was manifestly unreasonable.

Public interest test

27. Regulation 12(4)(b) is subject to the public interest test. This means that, even though the Commissioner accepts that the request was manifestly unreasonable and so regulation 12(4)(b) was engaged, the Commissioner must consider whether the public interest in the maintenance of the exception outweighs the public interest in disclosure of the information.
28. The Council has confirmed that this request relates to ongoing issues with regard to problems emanating from a landfill site at Walley's Quarry, Newcastle under Lyme, and that it has previously responded to requests from the complainant, and others, in relation to Walley's Quarry.
29. It has confirmed that information relating to the health concerns of H2S at the quarry is already available in the public domain via:
 - A [specific section](#) on its website;
 - Monthly assessments in relation to H2S published by the [UK-Health Security Agency](#); and
 - [Monthly updates](#) to the Council's cabinet in relation to H2S exposure.
30. The Commissioner accepts that there is considerable public interest in this issue. However, having reviewed the information already publicly available, it is clear that there is a great deal of information relating to the health concerns of H2S in the public domain.
31. In relation to the public interest in the information being requested in this case, the Commissioner is not convinced that providing this information would substantially add to any public interest argument, given the amount of information already in the public domain.

32. Therefore, taking into consideration the significant burden that responding would place on the Council, the Commissioner considers that the public interest in the maintenance of the exception outweighs the public interest in disclosure.

Regulation 9 – Advice and assistance

33. Regulation 9(1) states that a public authority has a duty to provide advice and assistance to a requestor, so far as it would be reasonable to expect the authority to do so.
34. As stated in the Commissioner's [guidance](#), 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 requestor with reasonable advice and assistance to help them submit a less burdensome request.
35. In this case, the Commissioner considers that given the specific wording of the request it would be difficult to refine it further. Therefore, the Commissioner has concluded that there is no easy way for the Council to suggest how the complainant could refine their request in such a way that it would be able to provide the information requested.
36. In light of the above, the Commissioner finds that the Council has complied with its obligations under regulation 9(1) of the EIR in its handling of 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.

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