

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

Decision notice

Date: 31 May 2024

Public Authority: Police Service of Northern Ireland
Address: Police Headquarters
65 Knock Rd
Belfast
BT5 6LE

Decision (including any steps ordered)

1. The complainant has requested correspondence relating to a planning application. The Police Service of Northern Ireland (PSNI) refused the request citing regulation 12(4)(b) on the basis that the request was manifestly unreasonable.
2. The Commissioner's decision is that the request is not manifestly unreasonable and PSNI was not entitled to rely on regulation 12(4)(b). The Commissioner also finds that PSNI failed to comply with regulation 5(1) in that it responded to the request outside the statutory time for compliance.
3. The Commissioner requires PSNI to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the complainant that does not rely on regulation 12(4)(b) of the EIR.
4. The public authority must take these steps within 30 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. The complainant submitted his original request to PSNI on 28 April 2023:

“On the 1st of August 2018 a [named individual] from the PSNI emailed [named individual] in the chief planners office stating that the PSNI had no issues with the planning application.

Upon looking further into this I cannot find any other representation from the PSNI to the DFi [the Department for Infrastructure] planning department or any other department on this application.

Under freedom of information can I please request any and all correspondence from the PSNI or representatives of the PSNI to the planners in relation to this application [details provided by the complainant] or matters arising from it...”

6. PSNI issued a refusal notice on 16 June 2023, citing regulation 12(4)(b) of the EIR on the basis that the request was manifestly unreasonable.

7. Following further correspondence the complainant submitted the following request to PSNI on 5 July 2023:

“To ensure absolute clarity, I kindly request a reinvestigation of the original request, replacing the term "planners" with officials within Dfi and NIEA (Northern Ireland Environment Agency) who are directly involved in the assessment of the Dalradian Gold live planning application. If the Police Service of Northern Ireland has subcontracted a consultant or any company to carry out this assessment and response on their behalf, I would also appreciate receiving the relevant correspondence from that party.

Furthermore, if possible, I would like to request the original assessment that was sought, even if it has not yet been submitted to the Dfi or NIEA staff members who are handling the aforementioned planning application.”

8. PSNI issued a refusal notice on 18 August 2023, again citing regulation 12(4)(b) as the basis for refusal. This position was maintained following an internal review.

Scope of the case

9. The complainant contacted the Commissioner on 1 October 2023 to complain about the way their request dated 5 July 2023 had been handled. The complainant maintained that the request was not manifestly unreasonable and that there was a substantial public interest in the requested information. They also complained that PSNI had failed to provide advice and assistance.

Reasons for decision

Regulation 12(4)(b): manifestly unreasonable request

10. Regulation 12(4)(b) of the EIR provides an exception from disclosure to the extent that a request is manifestly unreasonable. The term “manifestly unreasonable” is not defined in the EIR. However the Commissioner’s published guidance sets out his view that the purpose of the exception is to protect public authorities from exposure to a disproportionate burden or an unjustified level of distress, disruption or irritation, in handling information requests.¹
11. Unlike FOIA, the EIR does not set an appropriate costs limit above which public authorities may refuse to comply with requests for information. The main provision for dealing with burdensome requests under the EIR is regulation 7(1).
12. Regulation 7(1) allows a public authority to extend the time for compliance from 20 to 40 working days if it reasonably believes that the complexity and volume of the information requested means that it is impracticable to meet the 20 day deadline.

PSNI’s position

13. PSNI considered the complainant’s request to be manifestly unreasonable on the grounds that compliance would constitute a disproportionate burden on its resources.

¹ <https://ico.org.uk/media/for-organisations/documents/1615/manifestly-unreasonable-requests.pdf>

14. The Commissioner asked PSNI whether it had a standard procedure for commenting on planning applications. PSNI explained that its Estate Services Branch (ESB) and Information and Communications Services (ICS) would generally receive "statutory response requests", either directly or indirectly, from Premises Offices or Station Sites. Responses would be issued by ESB or ICS. However PSNI emphasised that requests for comment relating to planning applications for blasting sites were infrequent and consequently it did not have a central department for dealing with blasting site planning matters.
15. PSNI further explained that the Department of Justice, the licencing authority for blasting licence applications, occasionally approached PSNI's Explosives Blasting Unit (EBU) for PSNI's opinion. Such requests would be assessed by the EBU and other departments would be contacted as relevant to provide input.
16. With regard to the complainant's request PSNI explained that the EBU had consulted with seven business areas, having identified them as being most likely (although not certain) to hold information relevant to the request. Each business area undertook a search for relevant information, taking more than 20 hours in total.
17. PSNI set out that one business area, its Legal Department, identified documents containing 1040 pages, and PSNI undertook a dip sample of these documents. Keyword searches were carried out using terms such as "Dfi" (the Department for Infrastructure), "NIEA" and "Northern Ireland Environment Agency". One member of staff spent one hour examining 52 pages of documents, although no relevant information was identified. PSNI used this to estimate that if it searched for 18 hours it would only be able to examine 936 of the 1040 pages, which would itself only comprise a fraction of the documents identified as potentially containing relevant information.
18. PSNI explained to the Commissioner that it had undertaken further consideration of the 1040 pages and had experienced particular difficulties identifying relevant information, not least because several of the officers most likely to have been involved in the matter had since left PSNI and were not available to provide guidance or assistance. The officers attempting to identify relevant information were not familiar with the subject matter and found that the documents required careful examination and consideration because some of the legal terms were difficult to decipher. For these reasons PSNI argued that it could not rely on a cursory scan or skim of each page, but needed to examine it in detail.

19. PSNI pointed out that the officers attempting to identify relevant information were not aware of the names of potentially involved individuals or the titles of potentially related correspondence. In addition, individuals' names within documents could not easily be linked to whether or not they were involved in planning. One name was provided but it did not return any results when used as a search term.
20. The Commissioner drew PSNI's attention to information provided by the complainant, namely, information published by the Planning Appeals Commission relating to the planning application.² The Commissioner observed that the list of documents published includes a request for comment from PSNI dated 24 February 2016, PSNI's response dated 14 March 2016, and information sent to PSNI on 2 June 2016. The correspondence was sent to and from PSNI's Fermanagh and Omagh Secretariat. Consequently the Commissioner asked PSNI whether it could have limited or focussed its searches on this business area.
21. In response, PSNI clarified that it had previously dealt with a request from the same requester, and had consulted the Secretariat for information relevant to the request. The Secretariat had confirmed the following:

"As a District we have never been asked, nor have we given, any representation on the planning application to any governing body."
22. PSNI advised the Commissioner that it had not had sight of the information published on the Planning Appeals Commission website until referred to it by the Commissioner.

The complainant's position

23. The complainant provided the Commissioner with a submission in support of their position. They were concerned that PSNI had not provided

"... a clear and detailed breakdown of the estimated costs and the specific burdens that would be involved in processing the request."
24. The complainant also referred to PSNI's search for relevant information. They alleged that PSNI had used "planners" as an inappropriate search term, knowing that it would be likely to generate an unreasonable

² <https://www.pacni.gov.uk/crockanboy-road-proposed-abandonment>

response. The complainant suggested that searching by the company name may have been more suitable.

25. The complainant further argued that there was a substantial public interest in the requested information since it related to public safety.
26. Finally, the complainant referred the Commissioner to information published on the Planning Appeals Commission website relating to the planning application.³ The list of documents published included a request for comment from PSNI dated 24 February 2016, PSNI's response dated 14 March 2016, and information sent to PSNI on 2 June 2016.

The Commissioner's findings

27. As set out above, there is no appropriate limit under the EIR, and the considerations associated with the application of regulation 12(4)(b) on the grounds of burden are broader than those relevant to section 12 of FOIA. Under the EIR, the public authority must consider the proportionality of the burden or costs involved, and decide whether they are clearly and obviously unreasonable.
28. The Commissioner considers the appropriate limit⁴ relevant to section 12 of FOIA may serve as a useful indicator when considering whether a request is manifestly unreasonable on the basis of cost. For local authorities, the appropriate limit is set at £450, which is the equivalent of 18 hours' work at £25 per hour. However, the Commissioner must consider each case on its own merits, and must be mindful of the differences between the two access regimes.
29. The Commissioner further observes that the effect of extending the time for compliance under regulation 7(1) allows a public authority a further 20 working days. In the Commissioner's opinion a public authority concerned about the time taken to respond to a request ought to consider extending the time for compliance as provided by regulation 7(1), before refusing a request as manifestly unreasonable.
30. The Commissioner has carefully considered the information provided by both parties in this case. PSNI has provided a detailed and helpful explanation of the various searches carried out in respect of the request.

³ <https://www.pacni.gov.uk/crockanboy-road-proposed-abandonment>

⁴ As set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Fees Regulations).

It has also outlined the difficulties faced by its staff in examining information which may potentially contain relevant information.

31. In this case the Commissioner considers that PSNI has identified some business areas that may hold the requested information. However PSNI did not consult with its Fermanagh and Omagh Secretariat, having previously been advised by that business area that it had not corresponded with regard to the planning application. The Commissioner has seen no evidence that PSNI deliberately withheld any relevant information, but he is concerned that PSNI was apparently unaware that it had in fact corresponded in respect of a planning application.
32. The Commissioner also has concerns about the work estimated to be necessary in order to identify relevant information as set out at paragraphs 18 and 19 above. The request was for correspondence between PSNI and officials within Dfi and the NIEA regarding a specified planning application. PSNI argued that detailed consideration of each page of information was necessary, but the Commissioner considers this excessive. He does not accept that knowledge of specialist legal terms would be required in order to assess a document to decide whether or not it fell within the description set out in the request. Furthermore the Commissioner acknowledges the complainant's suggestion that a search using the name of the company involved in the planning application could have been undertaken, and believes this would have been a reasonable approach.
33. In light of the above the Commissioner is not persuaded by PSNI's arguments that searching for the requested information would constitute such a burden so as to render the request manifestly unreasonable.
34. The Commissioner does accept that searches would be required across several business areas but considers that the additional 20 working days allowed by regulation 7(1) of the EIR would be sufficient to absorb this work. If a working day is assumed to be eight hours on average, an extra 20 working days would allow PSNI an extra 160 hours to deal with the request.
35. For the reasons set out above the Commissioner finds that the complainant's request of 5 July 2023 is not manifestly unreasonable, and therefore PSNI was not entitled to engage the exception at regulation 12(4)(b). Accordingly the Commissioner has not gone onto consider the balance of the public interest, or the presumption in favour of disclosure.

Procedural matters

Regulation 5: time for compliance

Regulation 7: extension of time

36. Regulation 5(2) of the EIR requires that, subject to exceptions, a public authority make environmental information available in response a request no later than 20 working days after receipt of that request.
37. As set out above, regulation 7(1) provides that a public authority may extend the time for compliance from 20 to 40 working days if:

“...it reasonably believes that the complexity and volume of the information requested means that it is impracticable either to comply with the request within the earlier period or to make a decision to refuse to do so”.
38. In this case PSNI took 33 working days to answer the complainant’s original request of 28 April 2023, and 33 working days to answer the subsequent request of 5 July 2023 which is the subject of this complaint.
39. During his investigation the Commissioner drew PSNI’s attention to regulation 7(1) but PSNI did not indicate that it had sought to extend the time taken to respond in either case. In any event a public authority wishing to rely on regulation 7(1) is required to notify the applicant of that fact within 20 working days of receipt of the request. The Commissioner has seen no evidence to suggest that PSNI issued such a notification in respect of either request.
40. In light of the above the Commissioner finds that PSNI failed to comply with regulation 5(1) in respect of the request of 5 July 2023 in that it exceeded the statutory time for compliance.

Regulation 9: advice and assistance

41. Regulation 9 of the EIR sets out a duty on public authorities to provide advice and assistance, where reasonable, to applicants.
42. PSNI acknowledged the duty to comply with regulation 9 but advised the complainant that it was unable to suggest any amendment to their request which might refine it to a reasonable level.

43. The Commissioner notes that PSNI did not suggest a way in which the complainant might refine their request, however, he acknowledges that this is not always feasible. In this case the complainant made a fairly narrow request for correspondence on a specific subject between PSNI and another specified organisation. The Commissioner considers that, had good records management been in place, the request ought to have been relatively easy to administer without requiring refinement.
44. Accordingly, and in light of his finding that the request was not manifestly unreasonable, the Commissioner does not see an obvious way in which PSNI could have suggested that the request be suitably refined. He therefore finds that PSNI did not fail to comply with regulation 9 of the EIR.

Right of appeal

45. 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

46. 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.
47. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Sarah O’Cathain
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