

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

Date: 26 April 2024

Public Authority: Kirtlington Parish Council
Address: kirtlingtonclerk@gmail.com

Decision (including any steps ordered)

1. The complainant requested information from Kirtlington Parish Council ("the Parish Council") relating to a local neighbourhood plan and two specific sites. The Parish Council has refused the request under regulation 12(4)(b) of the EIR (manifestly unreasonable) on the grounds that to comply with the request would place an unreasonable burden on its resources.
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 5 July 2023, the complainant wrote to the Parish Council and requested information in the following terms:

"I am writing to make a formal request under the Freedom of Information Act 2000 for access to information held by the Kirtlington Parish Council and representatives of the mid-Cherwell neighbourhood plan and the planning subcommittee that represents the parish council. I kindly request all available

email correspondence, letters, and meeting minutes related to the following topics:

- Mid-Cherwell Neighbourhood Plan
- Jersey Fields
- Corner Farm Kirtlington

Specifically, I would like to request all relevant information, including email correspondence, letters, and meeting minutes involving the Mid Cherwell Neighbourhood Plan representatives and the Planning Sub-Committee. The individuals I am specifically interested in are:

[name redacted]

[name redacted]

[name redacted]

Please include all documents and records that involve or mention these individuals in relation to the Mid Cherwell Neighbourhood Plan, Jersey Fields, and Corner Farm Kirtlington. The requested information should cover the period from 1st January 2020 to 5th July 2023.”

5. The Parish Council responded on 20 July 2023 and refused the request, citing section 12 of FOIA (cost limit) as its basis for doing so. It also stated that it considered section 14(2) (repeat requests) and section 22 (information intended for future publication) may be engaged. It upheld its original position when writing to the complainant again on 28 July 2023.
6. Upon acceptance of this complaint, the Commissioner advised the Parish Council that he considered the request should have been considered under the EIR. The Parish Council subsequently reconsidered the request under the EIR. It refused the request under regulation 12(4)(b) of the EIR (manifestly unreasonable) on the grounds that to comply with the request would place an unreasonable burden on its resources.

Scope of the case

7. This notice considers whether the Parish Council is entitled to refuse the request under regulation 12(4)(b) of the EIR (manifestly unreasonable) on the grounds that to comply with the request would place an unreasonable burden on its resources. It also considers whether the Parish Council complied with its obligations under regulation 9 of the EIR to offer advice and assistance.

Reasons for decision

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

8. 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.
9. 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.
10. 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.
11. The Freedom of Information and Data Protection (Appropriate Limit and Fees) ("the Fees Regulations") sets out an appropriate limit for responding to requests for information under FOIA. The limit for local authorities, such as the Parish 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.
12. 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.
13. 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.

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>

14. When estimating the time it would take to comply with a request, this estimate must be reasonable, in that it should be sensible, realistic and supported by cogent evidence. It should be based on the quickest method of gathering the information requested, however, the estimate should be based on how the public authority actually holds its records whether its records management represents good practice or not.
15. As a sampling exercise, the Parish Council searched the email account of one of the individuals named in the request using the terms "MCNP", "Corner Farm" and "Jersey Cottages", in doing so it identified 500 emails which are potentially within scope of the request. The Parish Council believes that each of the three individuals named in the request are likely to hold a similar number of emails which would be identified by these search terms, the Parish Council therefore estimates that there are around 1500 emails to be reviewed that may be in scope.
16. The Parish Council argues that these emails would need to be reviewed individually in order, first, to determine whether they are held by the Parish Council for the purposes of the EIR and then, secondly, to consider whether any of the information is exempt from disclosure under regulation 12(4)(d) (material in the course of completion) and 12(4)(e) (internal communications) of the EIR.
17. The Parish Council estimates that this would take an average of between three and four minutes per email. Even taking the lower end of this estimate, of three minutes for each of the 1500 emails this gives a total estimate of 75 hours, which is well in excess of the time limit of 18 hours which serves as an indication of a reasonable burden to respond to an EIR request.
18. The Commissioner considers that the Parish Council has used appropriate search terms to identify information potentially in scope of the request and that the approach of assuming each of the three individuals would hold a similar number of emails is a reasonable approach to providing an estimate in the circumstances of the case.
19. The Commissioner's enquiries to the Parish Council during the course of his investigation have focussed largely on the question of whether it would be necessary to individually review each of the approximately 1500 emails in order to ascertain whether they are held by the Parish Council for the purposes of the EIR and therefore in scope of the request.
20. The Mid-Cherwell Neighbourhood Plan is a neighbourhood plan created and administered by the Mid-Cherwell Neighbourhood Plan Forum Partnership ("the MCNP Forum"). The MCNP Forum is a separate organisation to the Parish Council. Each of the three individuals named

in the request carry out (voluntary) work for both the Parish Council and the MCNP Forum. While the specific email arrangements of each of the three individuals vary slightly, the Parish Council states that each of the three individuals named in the request use the same email account for Parish Council correspondence and MCNP Forum correspondence and do not use a filing system within their accounts to ensure that correspondence relating to the two organisations is stored separately.

21. The Council therefore argues that only some of the approximately 1500 emails that would be identified through the search terms "MCNP", "Corner Farm" and "Jersey Cottages" would relate to those individuals' work for the Parish Council and therefore be held by the Parish Council for the purposes of the EIR and be in scope of the request. It argues that many of the emails, those relating to those individuals' work with the MCNP Forum, are not held by the Parish Council for the purposes of the EIR and therefore not in scope of the request. The Parish Council argues that the only way to determine which of the emails relate to their work with the Parish Council, as opposed to the MCNP Forum is to review them individually.
22. During the course of his investigation the Commissioner asked the Parish Council to consider whether there might be other means of identifying which emails within the individuals' accounts related to their work with the Parish Council, for example by filtering them by sender, but the Parish Council has not been able to identify any way to exclude MCNP Forum emails from the search results without reviewing them individually.
23. During the course of his investigation the Commissioner has also considered whether it may be the case that all of the MCNP Forum emails identified through the searches would be likely to also be held by the Parish Council for the purposes of EIR despite them having been sent / received in the course of the individuals' work with the MCNP Forum. The reason the Commissioner has considered this is because if it were the case that they were all held by the Parish Council for the purposes of the EIR it would not be necessary to review them individually to ascertain whether they were in scope. However, based on the submissions provide by the Parish Council, the Commissioner is satisfied that this is not the case.
24. If the information within the MCNP Forum emails had been used for any extent for the Parish Council's purposes, then it would be considered to be held by the Parish Council for the purposes of the EIR. However, the Parish Council has been clear in its submissions to the Commissioner as to the division of the roles of the Parish Council and the MCNP Forum. It states that (other than when the MCNP Forum specifically provides information to the Parish Council) it has no access to the MCNP Forum

information, which is merely held within the same personal email accounts of the individuals named in the request as Parish Council communications relating to similar topics. It further states that the overlap in personnel between the Parish Council and the MCNP Forum, "reflects only the civic minded and volunteering nature of those involved", rather than any blurring of the two roles and organisations. The Commissioner accepts this is not an uncommon scenario, particularly in a small community and he has not seen any evidence to suggest that the Parish Council has used information in the MCNP forum emails for its own purposes. He therefore accepts that the emails sent and received by the individuals named in the request in their roles with the MCNP forum are not held by the Parish Council for the purposes of the EIR.

25. For the reasons given above, given how the Parish Council stores its information, the Commissioner accepts that it would be necessary for the Parish Council to review each of the approximately 1500 emails individually in order to comply with the request. He is satisfied that the Parish Council's estimate of three to four minutes to review each email to check if it is in scope and whether any exceptions apply is a reasonable estimate. This gives a total estimated time to comply with the request of between 75 and 100 hours.
26. The Commissioner is therefore satisfied that the Parish Council has demonstrated that the time it would take to comply with the request is likely to significantly exceed the time limit of 18 hours which serves as an indication of a reasonable burden to respond to an EIR request.
27. 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 Parish Council.
28. 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.
29. When carrying out the test, regulation 12(2) requires a presumption towards the disclosure of the information.

Public interest test

30. The Parish Council argues that the impact that responding to the request would have on the Parish Council's ability to carry out its duties would

not be in the public interest as it would not be a proportionate use of its limited resources.

31. It also argues that the information that has been published about this matter, specifically the report from the MCNP Forum to the Parish Council on housing site allocations and the site assessments for the two sites named in the request, goes some way to meet the inherent public interest in transparency about the decision-making process in relation to these planning matters.
32. In this case, having considered the above, the Commissioner is satisfied that the public interest lies in the exception being maintained.
33. The Commissioner recognises the importance of transparency in planning matters. However, the central public interest in the exception being maintained relates to preserving the Parish 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.
34. 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.
35. The Commissioner is therefore satisfied that the Parish Council was entitled to rely on regulation 12(4)(b) to refuse the request.

Regulation 9 – the duty to provide advice and assistance

36. 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.
37. 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.
38. In relation to the advice and assistance that it has provided to the complainant, the Parish Council stated that on 5 September 2023 it

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>

wrote to the complainant, "explaining the steps that had been taken by KPC and MCNP, and the future steps for the progressing of the development of the local neighbourhood plan. This was to provide [the complainant] with a full understanding of the process that had taken place then to date, and for the future steps including the discussion, publication and public consultation on the process. It was considered that this would give to [the complainant] a good substantive understanding of the process and the considerations involved, and would provide him with the information to revise his FOI request in a more focused and potentially appropriate manner should he wish to do so."

39. Having seen the content of this letter the Commissioner notes that its focus is on explaining the process rather than making any specific suggestion as to how the request could be brought under the cost limit. The Commissioner, nevertheless, accepts the Parish Council's argument that the information within the letter, which includes dates of key meetings, would be useful to the complainant in formulating a more focused request.
40. The Commissioner is therefore satisfied that the Parish Council complied with its obligations under regulation 9 of the EIR to offer reasonable advice and assistance.

Other matters

41. The Commissioner notes that in this case the Parish Council's poor record management practices have been a contributing factor to the amount of time that it would take for it to comply with the request. Emails potentially within scope of the request were held in largely unstructured email accounts containing many thousands of emails, these email accounts were not limited to communication relating to Parish Council business, they also contained emails relating to those individuals' work with the MCNP Forum and in some cases the individual's personal life and / or employment.
42. The Parish Council should ensure that the information it holds is stored in such a way that allows for easy location and retrieval. The section 46

Code of Practice ("the Code")³ sets out the standard of record keeping considered acceptable for public authorities to adopt.

43. The Code is not directly legally binding but failure to follow it is likely to lead to breaches of the FOIA. As a public authority for the purposes of both the EIR and the FOIA the Parish Council should have regard for the recommendations of the Code.
44. In addition to the Code itself the Parish Council should consult the Commissioner's guidance on the Code.⁴ In particular it should consider his guidance on the use of non-corporate channels of communication and on the risk posed to very small public authorities, in the absence of good records management, of depending on one individual, who may become absent or leave their position, to be able to locate information.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1010395/Freedom_Information_Code_Practice_Web_Accessible.pdf

⁴ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-46-code-of-practice-records-management/#channels>

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.

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