

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 10 June 2024

Public Authority: Environment Agency
Address: Horizon House
Deaney Road
Bristol
BS1 5AH

Decision (including any steps ordered)

1. The complainant has requested, from the Environment Agency (EA), information relating to a specified environmental permit application. EA disclosed information, but the complainant considered that EA hadn't disclosed all relevant information. During the Commissioner's investigation, EA changed its position; it's now refusing the request under regulation 12(4)(b) (the 'manifestly unreasonable' exception).
2. The Commissioner's decision is that EA is correct to rely on regulation 12(4)(b) and refuse the request as manifestly unreasonable; he also finds that EA breached regulation 14 due to its late refusal in reliance on regulation 12(4)(b).
3. The Commissioner doesn't require further steps.

Request and response

4. On 6 September 2023, the complainant wrote to EA and requested information in the following terms:

"Please supply all documents, emails, files, calculations and worksheets relating to ... [environmental permit application reference redacted] ...".

5. EA responded on 10 October 2023, disclosing documents.
6. The complainant replied the same day, asking EA to confirm whether it had provided all of the requested information. They also commented that EA took "well over" 20 working days to provide its response (EA took 24 working days to respond); and that they considered EA was aware of the information they wanted and was trying to avoid providing it.
7. The next day (11 October 2023), EA confirmed that the complainant had "received all the information".
8. The Commissioner's understanding is that the complainant didn't respond to dispute that comment and tell EA what information they considered was missing and why. They did, however, submit a complaint to the Commissioner.

Scope of the case

9. The complainant contacted the Commissioner on 20 October 2023 to complain about the way their request for information had been handled.
10. In the following paragraphs, the Commissioner briefly outlines the original complaint and how his investigation unfolded, culminating in EA citing regulation 12(4)(b).
11. The complainant said that EA hadn't disclosed all relevant information, and they listed four 'core elements' of their complaint.
12. These included a concern about the time EA took to respond, and details about some information they believed was missing. The complainant also expressed a concern that a particular Excel spreadsheet EA had disclosed wasn't "useable or auditable" because it contained protected cells; and said they wanted EA to disclose information relating to a meeting that took place on 9 September 2023 (therefore post-dating their request of 6 September 2023) and subsequent discussions EA had.
13. The Commissioner exchanged correspondence with the complainant and EA about the concerns, and asked for EA's submissions.

14. EA then revisited the request and disclosed additional information to the complainant.
15. However, the complainant remained dissatisfied, and provided a further list of 'missing information'.
16. The Commissioner then wrote to EA about that information.
17. The Commissioner was also in contact with EA regarding the complainant's concerns about the Excel spreadsheet mentioned in the complainant's ICO complaint. The Commissioner was actually investigating two cases of the complainant's simultaneously, both involving similar concerns about hidden cells in Excel spreadsheets.
18. After considering the Excel spreadsheet issue further in the complainant's two cases, and realising there were some hidden cells, EA contacted the complainant and disclosed spreadsheets displaying cells that were previously hidden. (The Commissioner's understanding is that the further spreadsheets relate to the environmental permit application involved in the complainant's other ICO case, not the one involved in the present case.)
19. In addition, EA sent the Commissioner some further, final submissions, applying regulation 12(4)(b) in both of the complainant's cases that the Commissioner had been investigating.
20. The Commissioner therefore considers that the scope of this case is to decide whether EA is correct to apply regulation 12(4)(b) to the complainant's request of 6 September 2023 described above (paragraph 4 onwards). He'll also consider relevant procedural matters.
21. The Commissioner is satisfied that the requested information, about an environmental permit application, is environmental information. The Commissioner considers that it falls under regulation 2(1)(c) of the EIR.

Reasons for decision

Regulation 12(4)(b)

22. Regulation 12(4)(b) allows public authorities to refuse requests that are 'manifestly unreasonable'.

23. The purpose of the exception is to protect public authorities from a manifestly unjustified, inappropriate or improper use of the EIR.
24. As the Commissioner's guidance¹ explains, when considering this exception a public authority should ask itself whether the request is likely to cause a disproportionate cost or burden, or an unjustified level of distress, disruption or irritation.
25. This is the same question posed for vexatious requests under section 14(1) of the Freedom of Information Act 2000 (FOIA). Manifestly unreasonable and vexatious are essentially the same.
26. Requests can be manifestly unreasonable for one or more of a wide range of reasons. These may include the burden of dealing with the request, the applicant's motive, and any harassment or distress caused to staff.
27. As with all EIR exceptions, regulation 12(4)(b) is subject to the public interest test and the requirement, under regulation 12(2), to apply a presumption in favour of disclosure when considering the exceptions.
28. Based on EA's submissions, which the Commissioner outlines in the below paragraphs, the Commissioner's understanding is that EA is arguing that the request in the present case is manifestly unreasonable for one or more of a wide range of reasons, other than solely because of cost or burden.
29. The Commissioner's detailed guidance on section 14(1) of FOIA² will therefore be relevant in this case.
30. As that guidance notes, four broad themes provide a useful structure to start analysing whether a request is vexatious (although they aren't a checklist, and aren't exhaustive). They are the burden on the public authority and its staff; the motive of the requester; the value or serious purpose of the request; and any harassment or distress of and to staff.

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/regulation-12-4-b-environmental-information-regulations-manifestly-unreasonable-requests/>

² <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-14-dealing-with-vexatious-requests/>

31. A useful starting point is to assess the value or serious purpose of the request, before considering the impact handling the request would have.

Value or serious purpose

32. When considering value or serious purpose, the question is whether there's a public interest in disclosure. The requester's own private interests in the information carry little weight unless they coincide with a wider public interest.
33. The complainant has said that for several years, they've tried to engage with EA regarding a certain permitting process. The complainant is unhappy with decisions EA has made in response to permit applications, said EA's policies "are driving environmental damage and human harm", and they believe that EA's permitting process is "fundamentally flawed".
34. EA disputes the allegations made by the complainant regarding EA's processes, and has emphasised to the Commissioner that the complainant is unhappy with decisions EA has made in response to their permit applications.
35. EA has also argued that the complainant is using the EIR to further their own agenda, because the complainant perceives that EA's processes are unfair to them.
36. EA indicated that it hasn't received any other, similar concerns about its processes.
37. On the the Excel spreadsheet issue (the key issue, according to the complainant), EA has made convincing arguments against disclosure of the spreadsheets with password protection removed. EA emphasised that a disclosure under information access legislation is 'to the world', not just the requester who made the request. EA explained why certain cells are protected (eg so that the correct calculations are carried out), and that if such cells were left unprotected, EA wouldn't be able to rely on the spreadsheets completed by permit applicants (it would have to check each cell and calculation). EA also noted that removing the password protection could lead to unintentional changes being made by users.
38. EA argued that disclosure of the spreadsheets without password protection wouldn't be in the public interest, as it would remove trust and confidence in EA's capability to conduct permit determinations

accurately, fairly and independently, for the benefit of permit holders and the environment. It would mean EA having to check the calculations used by permit applicants, extending the application process and impacting EA's ability to process the type of environmental permits in question. EA also noted significant cost implications of such a disclosure.

39. EA noted that other routes are available for challenging EA's processes, rather than submitting requests under information access legislation.
40. Overall, EA questioned the value or serious purpose of the complainant's request.
41. Given the above points, the Commissioner considers that the complainant's request has limited value or serious purpose.
42. Clearly they have a private interest in the information (they're unhappy with a decision EA has made about a permit application, and the request relates to that dissatisfaction). Whilst the complainant has also expressed concerns about EA's processes, and may genuinely believe that disclosure would serve a wider public interest given their concerns, the Commissioner doubts there's any real public interest in its disclosure under the EIR.
43. Indeed, there are strong public interest considerations against disclosure of the information that the complainant has said they particularly want (namely the Excel spreadsheet, with the password protection removed).

Burden

44. As the Commissioner's guidance notes, several factors are relevant considerations when assessing the burden of dealing with a request.
45. First, the number of requests. It's common for a potentially vexatious request to be the latest in a series of requests submitted by an individual. The greater the number of requests, the more likely it is that the latest request is vexatious. The collective burden of dealing with the requests may mean a tipping point has been reached.
46. In this instance, EA has said that by the time of the complainant's request in September 2023, "the complainant had already made 14 requests for information and/or internal reviews" in 2023, similar to the request of September 2023.

47. The complainant provided the Commissioner with a list showing that they'd made eight information requests since February 2023, and that the request of 6 September 2023 was their ninth request that year.
48. EA estimates that it's spent up to 84 hours dealing with the requests the complainant submitted in 2023.
49. EA emphasised that the amount of time it has spent on dealing with the complainant's requests is "extraordinary".
50. EA also noted that between June 2022 and June 2023, the complainant submitted 14 complaints. The Commissioner's understanding is that those complaints related to issues similar to the issues forming the background to the complainant's request of September 2023 (the complainant's dissatisfaction with EA's permit decisions and processes).
51. The second relevant factor is the pattern of requests. A public authority may become overwhelmed, if numerous requests are made in quick succession. The Commissioner notes that the complainant made numerous requests in 2023, prior to their request of September 2023.
52. Third, duration. The duration over which requests are made may also be telling. Where requests have been submitted over a long period, this may indicate that requests will continue to be made in the future, and the Commissioner's guidance explains that public authorities may take into account the anticipated burden of those future requests when assessing burden. EA provided the Commissioner with a log detailing information requests that EA has received from the complainant since 2021. Furthermore, the log shows a number of requests submitted between September 2023 and February 2024 (so, after the request that is the focus of the present case), apparently in circumstances similar to those of the September 2023 request (the complainant's dissatisfaction with EA's permit decisions and processes). The log also indicates some information requests about other information requests (presumably, the complainant's own previous requests).
53. The complainant themselves provided the Commissioner with a document indicating that between 16 and 25 January 2024, the complainant requested "all documents, files and emails" or "all documents, emails, files, calculations and worksheets" relating to a total of 10 environmental permit applications.

54. Clearly, any concern in September 2023 about the burden of future information requests from the complainant was a legitimate one.
55. Finally, breadth. It's worth noting that the request was for "**all** documents, emails, files, calculations and worksheets" relating to the specified environmental permit application (emphasis added). The Commissioner considers that it's also worth noting EA's comments in relation to the work that would have to be done to provide the calculations and "workings" the complainant said they want. EA has commented that to review each cell in the Excel spreadsheets forming a key aspect of the complainant's requests, and ensure that every formula is displayed or provided, would involve significant cost.
56. The Commissioner considers that the burden of the complainant's requests is considerable; and that in this instance, burden is a weighty factor in favour of deeming the request of 6 September 2023 vexatious.

Motive

57. The complainant has argued that they made their information request to obtain information they believe they need in order to appeal EA's decision on an environmental permit application. The Commissioner's understanding is that the complainant believes that without the requested information, they can't effectively challenge EA's decisions.
58. The complainant has emphasised that their main concerns relate to the requested Excel spreadsheet and the issue of password protected cells.
59. However, EA has explained that the complainant doesn't need the further information they're seeking under information access legislation, in order to challenge the permit decisions in question. The Commissioner conveyed that to the complainant (who disagreed with it).
60. As the Commissioner's guidance on vexatious requests and motive explains, a public authority may only be able to work out the motive of the requester by referring to its previous interactions with them.
61. EA explained that the complainant has a history of being dissatisfied with responses that EA provides, and said "the complainant will remain dissatisfied with any response as [their] motives are focussed on disrupting our processes and diverting resources".

62. EA noted the number of requests and complaints made by the complainant in the period prior to September 2023 (see the above paragraphs on 'burden' for details), and considers the complainant is attempting to circumvent proper procedures for disputing EA's decisions and disrupt EA's permitting team. In EA's view, the complainant's actions are an attempt to challenge its policy position with regard to the permit decisions.
63. EA considers that the complainant is using the EIR to air their grievances with EA.
64. It's clear from the complainant's own comments that the complainant, through their requests and complaints, seeks to "remedy a deficiency" in EA's policies as they perceive them.
65. Ultimately the Commissioner considers that there's an element of attacking EA, over policies and decisions the complainant disagrees with.

Harassment or distress

66. The Commissioner recognises that a request which is the latest in a series demonstrating obsessive behaviour can have the effect of harassing staff due to the collective burden the requests place on staff.
67. EA didn't make comments specifically about harassment or distress in its final submissions about regulation 12(4)(b). However, the Commissioner has seen an email from EA to the complainant (supplied to the Commissioner by the complainant) in which EA did note that an "unjustifiable level of distress" was being caused by the complainant's correspondence (EA noted it was frequent, voluminous and repetitious).
68. That was in the context of refusing requests that the complainant had submitted in January 2024. However, the Commissioner is prepared to recognise that staff will have been experiencing distress at the time of the request being considered in the present case, given the points he's noted above on 'burden' (the number, pattern and duration of requests).

Balancing exercise

69. The key question to consider, as objectively as possible, is whether the value and purpose of the request are enough to justify the impact of the request on the public authority.

70. The context and history of a request is often a major factor in determining whether it's vexatious.
71. Where a requester has made a number of requests over the years, they may all have a common theme, and stem from a specific concern or grievance of the requester. It's clear from EA's submissions that EA considers this is true of the requests that the complainant has been submitting to EA. Furthermore, the complainant themselves has told the Commissioner (March 2024), when explaining the background to their requests, that for the past five years they've been attempting to engage with EA about a certain permitting process that the complainant believes is flawed.
72. Given his view on the limited value and purpose of the request in terms of the public interest, and the significant burden of the complainant's requests in connection with this topic (as outlined above), the Commissioner finds that the impact of the request isn't justified and that regulation 12(4)(b) is engaged.

Public interest test

73. The public interest in maintaining the exception lies in protecting public authorities from exposure to disproportionate burden or an unjustified level of distress, disruption or irritation in handling information requests.
74. In its comments on the public interest test, EA commented "We do not consider there is any public benefit to conducting further and extensive searches for information that relates solely to applications submitted by the complainant".
75. EA also directed the Commissioner to the information EA had put forward to show the exception is engaged (outlined above), and argued that it points to a strong public interest in maintaining the exception.
76. EA's submissions also note the impact of the complainant's requests on EA's permitting team, and its ability to deal with day-to-day matters.
77. EA emphasised that there are other, more appropriate ways to challenge EA's processes.
78. The Commissioner recognises that there will always be some public interest in disclosure, to promote transparency and accountability, greater public awareness and understanding of environmental matters,

a free exchange of views, and more effective public participation in environmental decision making, all of which ultimately contribute to a better environment.

79. However, the Commissioner considers that in this instance, such considerations have limited weight. Disclosure would primarily serve the complainant's own private interests; and whilst the Commissioner acknowledges that the requested information and the complainant's concerns about the permitting process are clearly important to the complainant, he doesn't consider the information and issues have wider importance.
80. He notes, for instance, that EA has indicated it's received no other concerns about the processes in question, other than the complainant's.
81. The Commissioner agrees with EA's position, that the public interest lies in favour of maintaining the exception
82. As the Commissioner's guidance makes clear, the presumption in favour of disclosure (regulation 12(2)) is unlikely to make any substantial difference, in circumstances where (as here) it's been decided that the exception is engaged and that the public interest in maintaining the exception outweighs the public interest in disclosing the information.
83. The Commissioner therefore finds that EA is correct to cite regulation 12(4)(b), and refuse the complainant's request of 6 September 2023 as manifestly unreasonable.

Procedural matters

84. EA took longer than 20 working days to refuse the request in reliance on regulation 12(4)(b). Consequently EA breached regulation 14 of the EIR.

Right of appeal

85. 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

86. 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.

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

Daniel Kennedy
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