

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 13 June 2024

**Public Authority:** Kent County Council  
**Address:** County Hall  
Maidstone  
Kent  
ME14 1XQ

#### **Decision (including any steps ordered)**

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1. The complainant requested information from Kent County Council ("the Council") relating to a specific verge and tree. The Council refused the request under regulation 12(4)(b) (manifestly unreasonable) of the EIR.
2. The Commissioner's decision is that the Council is entitled to rely on regulation 12(4)(b) to refuse to comply with the request.
3. However, he also finds that the Council breached regulation 11 (reconsideration) of the EIR by failing to provide the complainant with the outcome of its internal review within 40 working days.
4. The Commissioner does not require the Council to take any steps.

#### **Request and response**

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

"I would like copies of all KCC Highways Internal & External e-mails, letters, Meetings & Telephone calls over Verge / Tree on Staplestreet Road fronting Lavender Cottage leading up to and covering the following dates:-

13-07-2020, 23-09-2020, 01-10-2020, 17-11-2020, 27- 11-2020, 30-11-2020, 02-12-2020, 03-12-2030, 08-12- 2020, 10-

12-2020 11-12-2020, 14-12-2020, 18-12- 2020, 11-01-2021 & 18-01-2021.”

6. The Council responded on 4 October 2023 and refused to provide the requested information citing regulation 12(4)(b) (manifestly unreasonable) of the EIR as its basis for doing so.
7. On 23 November 2023 the complainant requested an internal review. The Council provided the complainant with the outcome of its internal review on 28 February 2024 in which it maintained its original position.

### **Reasons for decision**

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8. This reasoning covers whether the Council is entitled to rely on regulation 12(4)(b) of the EIR to refuse to provide the requested information.
9. The complainant does not consider their request to be manifestly unreasonable. In their complaint to the Commissioner the complainant stated that they believe disclosure of the requested information to be in the public interest.

### **The Council's position**

10. The Council considers the request to be manifestly unreasonable. In its submissions to the Commissioner the Council stated that it considers that complying with the request would impose a disproportionate burden on Council resources. It explained that in order to provide the requested information, Council officers would need to search their email mailboxes, shared network drives, preserved correspondence bundles, calendars, associated legal matters and complaints for information within the scope of the request. Therefore, the Council estimates that it would take more than 18 hours to provide the requested information.
11. However, the Council stated that whilst complying with the request would pose a significant burden on Council resources, it primarily considers the request to be manifestly unreasonable due to the broader context of the case. The Council explained that the request relates to a dispute between the complainant and the Council which began in July 2020 when the complainant contacted the Council to raise concerns about a Council visit to land which the complainant believed they owned.
12. The Council stated that in December 2020, following works to remove a tree that was obstructing highways visibility, the complainant made a complaint to the Council about damage to their property which the complainant believes to have been caused by the removal of the tree.

The Council explained that the complainant subsequently exhausted both stage 1 and stage 2 of its complaints process and escalated the matter to the Local Government Ombudsman (LGO).

13. The Council explained that the LGO determined that there were no grounds for further investigation and recommended to the complainant that they take their complaint about property damage to court. The Council stated that following legal action, it made a compensatory payment to the complainant.
14. The Council considers that the complainant has exhausted every legal and regulatory mechanism available to them to pursue their grievance. It believes the complainant to be using their request to attempt to reopen a matter which has already been formally resolved and settled. The Council believes that disclosure of the requested information would not resolve the complainant's concerns about damage to their property and would likely result in further correspondence.
15. The Council explained that since July 2020 it has received a substantial amount of correspondence from the complainant which has been addressed by a number of Council officers including department managers, directors and legal officers. It stated that officers have likely spent several hundred hours dealing with the complainant's correspondence. Furthermore, the Council considers much of the complainant's correspondence to be voluminous and complex, and to be written in an accusatory and combative manner. It believes the complainant's 126 page internal review request to be evidence of this.

### **The Commissioner's position**

16. The Commissioner notes that since July 2020 the complainant has sent a large volume of correspondence to the Council which has taken the Council several hundreds of hours to respond to. He considers that dealing with this correspondence would have placed a significant burden on the Council limiting the amount of time that it is able to spend performing other duties.
17. Furthermore, having reviewed the complainant's extensive internal review request, the Commissioner notes that the vast majority of its content relates to the complainant's complaint about damage to their property rather than the request for information. Therefore, he accepts that the complainant is using their request to attempt to reopen the complaint.
18. As the complainant's complaint about damage to their property has already been addressed by both the LGO and the courts, the Commissioner considers the request to lack a serious purpose and

value. He also considers that compliance with the request would not resolve the complainant's concerns and would likely result in further correspondence being sent to the Council. This would place a further burden on the Council and its limited resources.

19. Therefore, the Commissioner is satisfied that the request is manifestly unreasonable and so regulation 12(4)(b) of the EIR is engaged. He will now go on to consider the public interest test.

### **Public interest test**

20. In its internal review response the Council acknowledged that the complainant has a significant private and personal interest in the disclosure of the requested information. However, it considers that the complainant's interests are not necessarily synonymous with the wider public interest. The Council recognised that disclosing the withheld information would increase transparency around how the Council assigns and undertakes verge maintenance activities. It also acknowledged that there is an inherent public interest in the disclosure of environmental information by public authorities.
21. However, the Council considers that there is a strong public interest in it being able to deploy its resources effectively and efficiently to best service the broader public interest. The Council stated that in order to comply with the request it would have divert officers from essential day to day tasks. As it has already spent a significant amount of time and resources dealing with the complainant's correspondence, the Council does not consider this to be in the public interest.
22. Therefore, the Council concluded that the public interest in maintaining the exemption outweighed the public interest in disclosing the information.
23. Whilst the Commissioner recognises that the requested information is of significant interest to the complainant, he does not consider the information to be of interest to the wider public. Furthermore, given that the Council has already spent a substantial amount of time dealing with the complainant's previous correspondence, the Commissioner does not consider that it would be in the public interest for the Council divert further resources to deal with the request.
24. Therefore, the Commissioner's conclusion is that the public interest in the maintenance of the exception provided by regulation 12(4)(b) outweighs the public interest in disclosure of the withheld information.
25. Regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the

regulation 12 exceptions. As stated in the Upper Tribunal decision *Vesco v Information Commissioner* (SGIA/44/2019):

“If application of the first two stages has not resulted in disclosure, a public authority should go on to consider the presumption in favour of disclosure...” and “the presumption serves two purposes: (1) to provide the default position in the event that the interests are equally balanced and (2) to inform any decision that may be taken under the regulations” (paragraph 19).

26. As covered above, in this case the Commissioner’s view is that the balance of the public interest favours the maintenance of the exception, rather than being equally balanced. This means that the Commissioner’s decision, whilst informed by the presumption provided for in regulation 12(2), is that the exception provided by regulation 12(4)(b) was applied correctly. Therefore, the Council is not required to disclose the requested information.

## **Procedural matters**

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### **Regulation 11 – reconsideration (internal review)**

27. Regulation 11 of the EIR states that:

“(3) The public authority shall on receipt of the representations and free of charge—

- (a) consider them and any supporting evidence produced by the applicant; and
- (b) decide if it has complied with the requirement.

(4) A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the date of receipt of the representations.”

28. In this case, the complainant requested an internal review on 23 November 2023 and the Council did not provide the outcome of its internal review until 28 February 2024. The Commissioner therefore finds that the Council has breached regulation 11 of the EIR by failing to carry out an internal review within the statutory time limit of 40 working days.

## **Right of appeal**

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29. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

30. 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.
31. 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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