

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 4 June 2014

Public Authority: Harpenden Town Council

Address: Town Hall
Leyton Road
Harpenden
Hertfordshire
AL5 2LX

Decision (including any steps ordered)

1. The complainant has made a request to Harpenden Town Council ("the council") for all emails from between two dates that contain the word "Westfield". The council refused the request citing regulation 12(4)(b) of the Environmental Information Regulations ("the EIR").
2. The Commissioner's decision is that the council has correctly applied regulation 12(4)(b).
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 30 September 2013 the complainant wrote to the council and requested the following:

"I should be grateful if you would supply me, under the Freedom of Information Act, with all email correspondence received by or sent from the Town Clerk containing the word "Westfield" for the period dating December 1st 2012 to September 30th 2013"
5. The council responded on 17 October 2013 and refused the request citing regulation 12(4)(b).

6. The council provided an internal review on 15 November 2013 in which it upheld its position, but invited the complainant to narrow the scope of the request.

Scope of the case

7. The complainant contacted the Commissioner on 27 November 2013 to contest the council's response.
8. The Commissioner considers that the scope of this case is the determination of whether the council has correctly applied the exception provided by regulation 12(4)(b).

Reasons for decision

Is the information environmental?

9. Information is "environmental" if it meets the definition set out in regulation 2 of the EIR. Environmental information must be considered for disclosure under the terms of the EIR. Under regulation 2(1)(c), any information about measures, such as plans, agreements or activities, that may affect the elements contained within regulation 2(1)(a) will be environmental information. The substantive matter that this request relates to is the potential development of public green space within a geographic area known as "Westfield". The Commissioner therefore considers that the request should be dealt with under the terms of the EIR.

Regulation 12(4)(b) – Requests that are manifestly unreasonable

10. Regulation 12(4)(b) states that:

*"For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that-
(b) the request for information is manifestly unreasonable..."*

11. The Commissioner's public guidance on the application of regulation 12(4)(b) is available at:

http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/manifestly-unreasonable-requests.ashx

12. The guidance contains the Commissioner's definition of the regulation, which is taken to apply to requests in two circumstances: 1) where the

request is vexatious, and 2) where the cost of compliance with the request would be too great.

13. The EIR does not contain a limit at which the cost of compliance with a request is considered to be too great. However, the Commissioner's guidance suggests that public authorities may use The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 as an indication of what Parliament considers to be a reasonable charge for staff time. Under that legislation, Parliament considered £25 per hour to be a reasonable hourly charge when determining the cost of staff time in responding to a request.
14. For the purposes of the EIR, a public authority may use this hourly charge in determining the cost of compliance. However, the public authority is then expected to consider the proportionality of the cost against the public value of the request, before concluding whether the request is manifestly unreasonable.

Whether the exception is engaged

15. The council's position is that the complainant's request would incur unreasonable financial costs and cause a significant diversion of public resources.
16. The council's submission to the Commissioner has advised that "Westfield" is an area of the town of Harpenden, and the term is consequently found in a variety of emails, such as those relating to groups, land holdings, roads, and neighbourhood initiatives. The council has undertaken a keyword search within its email software and has identified that there are approximately 400 relevant emails within the Town Clerk's inbox that derive from within the specified time-frame. The council has proposed that it would take approximately three minutes to assess each email for any information otherwise exempt under the EIR, before copying the text to word processing software. As such, to assess and provide the approximately 400 identified emails would require 20 hours of staff time, representing a financial cost of £500. The council has proposed that beyond the financial cost, compliance with the request would also represent a significant diversion of resources for a first-tier public authority of its size, as it would prevent the Town Clerk from administering the core business of the council for an extended period of time.
17. The council believes that narrowing the request to focus on a specific issue or matter would lead to a higher public value in the request, and a greater likelihood of the council being able to respond.

18. Having considered the financial cost that would be required to comply with the request, in addition to the limited resources of the public authority and the broadness of the request itself, the Commissioner has concluded that compliance with the request would be manifestly unreasonable on the grounds of cost, and that the council was therefore correct to engage regulation 12(4)(b).

Regulation 12(1)(b) - The public interest test

19. The EIR explicitly requires a public authority to apply a public interest test, in accordance with regulation 12(1)(b), before deciding whether to maintain an exception. The Commissioner accepts that public interest factors, such as proportionality and the value of the request, will have already been considered by a public authority in deciding whether to engage the exception, and that a public authority is likely to be able to 'carry through' the relevant considerations into the public interest test. However, regulation 12(2) of the EIR specifically states that a public authority must apply a presumption in favour of disclosure. In effect, this means that the exception can only be maintained if the public interest in withholding the information outweighs the public interest in disclosure. The Commissioner will therefore consider the public interest factors present in the request.

The public interest in disclosure

20. The Commissioner understands from the complainant's submission that the request relates to her concern about the potential development of a site (encompassing an allotment site and playing fields) that is located in an area known as "Westfield" within Harpenden. It is clear from the information that the complainant has submitted, that the future of this site has been a matter of continued public interest since 2005, with a variety of actions being taken by the council and the complainant in order to decide its future use.
21. The complainant has specifically advised that she wishes to view the "narrative" that took place within the council in the period of time after a public enquiry that took place in respect of the status of the site, and that the release of the requested information is necessary for the sake of openness and transparency on the part of the council.

The public interest in maintaining the exemption

22. The Council has advised the Commissioner that it has considered the diversion of its limited resources to be a strong reason for the maintenance of the exception, as compliance with the request would divert council officers away from core duties for an extended length of time.

23. Additionally, the Commissioner has noted that at internal review the council has provided the complainant with an opportunity to refine the scope of her request, in accordance with the requirement to provide advice and assistance provided by regulation 9(1).

Balance of the public interest test

24. The Commissioner recognises the inherent importance of accountability and transparency in decision-making within public authorities, and the necessity of a public authority bearing some costs when complying with a request for information. However, in considering the public interest test for this matter, the Commissioner must assess whether the cost of compliance is disproportionate to the value of the request.
25. Having considered the relevant factors in this matter, the Commissioner has concluded that the public interest favours the maintenance of the applied exception. The factors that have been relevant in reaching this conclusion have included the small size and limited staff resources of the council, and the council's invitation to the complainant to reduce the scope of the request. While the Commissioner appreciates that the specific matter that has been referred to by the complainant remains a continued matter of local interest and contention, he does not consider that there is any clear justification for why the applied exception should not be maintained in the circumstances of this case.

Regulation 9(1) – Advice and assistance

26. Regulation 9(1) of the EIR states that:

"A public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants."

27. This regulation places a duty on a public authority to provide advice and assistance to an individual making a request. The Commissioner believes that this includes assisting the individual to refine a request that would otherwise incur a manifestly unreasonable cost.
28. The Commissioner notes that advice and assistance was given by the council at internal review stage, namely that the council confirmed it would be able to consider a new request that was more specific. The Commissioner considers this to be the only reasonable advice and assistance that the council could have provided in the circumstances, as there were no specific references to what the complainant sought in either the request for information, or the request for an internal review. The Commissioner therefore finds the council has complied with regulation 9(1).

Right of appeal

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: 0300 1234504

Fax: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

Website: 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.

Signed

Andrew White
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