

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

**Date:** 16 March 2015

**Public Authority:** Dorset County Council  
**Address:** County Hall  
Colliton Park  
Dorchester  
Dorset  
DT1 1XJ

**Decision (including any steps ordered)**

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1. The complainant has requested information relating to statutory notices issued under the Highways Act 1980. The Commissioner's decision is that Dorset County Council has correctly applied the exception for manifestly unreasonable requests at Regulation 12(4)(b) of the EIR.

**Request and response**

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2. On 14 August 2014, following previous correspondence on the issue, the complainant wrote to Dorset County Council ('the council') and requested information in the following terms:

"Could you please advise details of any statutory notices issued under the Highways Act 1980 such as those issued under Sections 152, 154, 167 and 230 (and any other sections as appropriate) that remain open i.e. where the matter has not been resolved by the property/land owner.

Please provide the following information for each notice:

Date issued  
Legislation and Section issued under  
Reason for issue

Postcode of the address the notice relates to

If you need further clarification, please do not hesitate to contact me."

3. The council responded on 15 August 2014 and referred to a previous response dated 24 June 2014 which said that the fees limit applies as it would take in excess of 18 hours to obtain the information requested from all the areas of Highways and Rights of Way who would issue such notices.
4. The complainant expressed dissatisfaction with the response on 15 August. The council provided an internal review on 9 September 2014. It said that the request should have been dealt with under the EIR and applied the exception at regulation 12(4)(b). It said that it would take longer than 37 hours to obtain all of the information and to in effect compile a register.
5. The complainant wrote to the council again on 10 September 2014 as she felt that her request had been misunderstood.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 16 October 2014 to complain about the way her request for information had been handled.
7. The Commissioner has considered the council's application of Regulation 12(4)(b).

### **Reasons for decision**

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#### **Regulation 12(4)(b) – manifestly unreasonable**

8. Regulation 12(4)(b) of the EIR provides that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable.
9. In this case, the council cited this exception on the grounds that the cost and burden of dealing with the request is too great.
10. The EIR differ from the FOIA in that no specific limit is set on the amount of work required by an authority to respond to a request as provided by section 12 of the FOIA. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the fees regulations) which apply in relation to section 12 of the FOIA are not

directly relevant to the EIR - the cost limit and hourly rate set by the fees regulations do not apply in relation to environmental information. However, the Commissioner accepts that the fees regulations provide a useful starting point where the reason for citing regulation 12(4)(b) is the time and cost of a request but they are not a determining factor in assessing whether the exception applies.

11. The Commissioner is satisfied that Regulation 12(4)(b) sets a fairly robust test for an authority to pass before it is no longer under a duty to respond. The test set by the EIR is that the request is 'manifestly' unreasonable, rather than simply being 'unreasonable' per se. The Commissioner considers that the term 'manifestly' means that there must be an obvious or clear quality to the identified unreasonableness.
12. It should also be noted that public authorities may be required to accept a greater burden in providing environmental information than other information. This was confirmed by the Information Tribunal in the DBERR case<sup>1</sup> where the tribunal considered the relevance of regulation 7(1) and commented as follows (paragraph 39):

"We surmise from this that Parliament intended to treat environmental information differently and to require its disclosure in circumstances where information may not have to be disclosed under FOIA. This is evident also in the fact that the EIR contains an express presumption in favour of disclosure, which FOIA does not. It may be that the public policy imperative underpinning the EIR is regarded as justifying a greater deployment of resources. We note that recital 9 of the Directive calls for disclosure of environmental information to be "to the widest extent possible". Whatever the reasons may be, the effect is that public authorities may be required to accept a greater burden in providing environmental information than other information."

13. Therefore, in assessing whether the cost or burden of dealing with a request is clearly or obviously unreasonable, the Commissioner will take the following factors into account:
  - Proportionality of the burden on the public authority's workload, taking into consideration the size of the public authority and the resources available to it, including the extent to which the public authority would be distracted from delivering other services.

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<sup>1</sup> Department for Business Enterprise and Regulatory reform v The Information Commissioner and Platform. Appeal no. EA/2008/0097

- The nature of the request and any wider value in the requested information being made publicly available.
  - The importance of any underlying issue to which the request relates, and the extent to which responding to the request would illuminate that issue.
  - The context in which the request is made, which may include the burden of responding to other requests on the same subject from the same requester.
  - The presumption in favour of disclosure under regulation 12(2);
  - The requirement to interpret the exceptions restrictively.
14. In its response to the Commissioner's enquiries, the council said that it felt it was important to firstly address the purpose of the request. It said that the request is based on the assumption that any unresolved Highways notices may become registered as local Land Charges which is not the case, as it has explained to the complainant in email correspondence. It explained that only notices issued under s.230 (urgent repairs to private streets) could trigger a process that ultimately could give rise to local Land Charges, and that under the Highways Act it has no power to register unresolved notices issued under sections 152,154, 164 and 167 (or its incurred costs) as local Land Charges. It said that it understands that the complainant is not asking for details of Land Charges (as she is aware that the council does not hold that information and that they can be obtained from the Land Charges Register) but that she has assumed that there may be months between the initial notice being issued and any resultant Land Charge being registered. It said that there may be a misunderstanding as the notices are intended to be short processes; a number of weeks from issue to completion of work, and as set out above, they will not result in Land Charges being registered.
15. The council explained that due to the short term nature of the notices, any response would only show the number of open notices at that particular time; the position is not static. It said that given that notices could be issued at any time, it does not consider the request to be a one off, and anticipate that regular requests for copy notices will be made.
16. The council said that it does not have a single central register of all Highways Act notices issued and that notices may be issued in a number of formats, from letter to document, and by a number of individuals across a number of County Council teams; Legal Services (Environment and Contracts team), Rights of Way, Countryside Rangers, Road Space Management, and Highways Information Unit. It said that the teams

listed have the following numbers of officers who may issue or advise in relation to notices:

- Legal Services (Environment and Contracts team) - 7 officers
- Rights of Way
- Countryside Rangers
- Road Space Management - 8 enforcement officers
- Highways Information Unit

17. It said that it has not been possible to establish cost estimates for the activities set out below:

- Determining whether the information is held
- Locating the information/document
- Retrieving the information/document
- Extracting the information/document

because, in essence, that would require each of the teams to conduct the process of complying with the request, by searching for open notices and property details, as no central database exists. The council also said that it anticipates that in addition to the activities listed, it would also be required to relay the information to the applicant and most likely be required to provide ongoing information and updates about notices.

18. The council explained that the information requested is already available from its Highways Information Unit as part of a response to conveyancing Con29 forms for individual properties and that officers already have to contact all relevant teams to obtain responses for those forms and therefore the request is a duplication of an existing, and already time consuming process, and would take greater resource as the request relates to all properties in Dorset, whereas Con29's relate to one individual property at a time.

19. The council surmised that, as there is no central record, no template notice format, numbers of officers across several teams may be issuing notices, and the request is unlikely to be a one off request, over time the cost of compliance would vastly exceed £450, based on a rate of £25 per hour (18 hours). It also said that the request would require a disproportionate amount of officer time, to carry out the searches and provide information, (which would simply duplicate activities which are already undertaken by officers when responding to CON 29 forms), compared to the workloads of the teams involved, and the limited benefit/importance of the information requested (as the notices cannot become Land Charges and are available via Con 29 requests).

20. The complainant has said that the information has been denied due to poor organisation of the council's records. The Commissioner would like

to draw attention to the fact that the EIR is concerned with recorded information that is actually held by a public authority, not what a complainant believes should be held.

21. The Commissioner also draws attention to the fact that a public authority cannot include the burden of dealing with future requests which have not yet been made when applying the exception for manifestly unreasonable requests on the grounds of costs or diversion of resources and therefore such arguments cannot be taken into account in this case.
22. In relation to the burden imposed by this request, the Commissioner notes that the council did not provide details of, for example, how many files, folders, spreadsheets etc would need to be searched and how long such searches would be likely to take. The Commissioner notes that in the internal review response the council said that it would take longer than 37 hours to obtain all of the information. Given the wide ranging nature of the request, both in terms of the information sought and the area the council is responsible for, and the number of different areas within the council that would need to be involved in the search for information, the Commissioner considers this estimate to be reasonable and for it to be a significant burden.
23. The Commissioner has taken into account the presumption in favour of disclosure and the requirement to interpret the exceptions restrictively and accepts that when an exception from the EIR is cited, the arguments in favour of the citing of that exception must be sufficiently compelling to outweigh these factors. However, in the particular circumstances of this case, the Commissioner has found that the time and cost of dealing with the request would impose a disproportionate burden upon the council when weighed against the value of the requested information being made public, taking into account that information relating to specific properties is available via the Con 29 requests, that the information would only be current at the exact time it is supplied, and the workloads of the teams that would need to be involved. He therefore considers that the exception is engaged and has gone on to consider the public interest test inherent in this exception.

### **Public interest test**

24. All exceptions in the EIR are subject to the public interest test. Therefore, in deciding whether the information should be withheld the Commissioner has had to balance the public interest in maintaining the exception against the public interest in disclosure.
25. The council did not refer to any public interest in disclosure of the requested information. The Commissioner has taken into account the

general public interest in transparency and accountability. He is also mindful of the presumption in favour of disclosure and the need to read exceptions restrictively.

26. In relation to the public interest in maintaining the exception, the council said that the information requested is already available in response to Con29 requests for individual properties and that the work required in order to respond to this request (and any future regular request) will be a duplication and inefficient use of officer time and council resources.
27. It also said that providing the requested information would only show notices which are open at the time and because the position is not static and notices may be issued at any time, for the information requested to be of any use further requests would have to be made placing additional burden on officers and diverting them from their other work. The Commissioner considers that the council's reference to the information being of any use relates to the requested information being used to complete Con29 searches.
28. The Commissioner has taken into account the burden and distraction that would be imposed on the council and the wider public interest in protecting the integrity of the EIR and ensuring that they are used responsibly.
29. On balance the Commissioner finds that the public interest favours maintaining the exception as the burden imposed on the council would be significant and, due to the constantly evolving status of the information, any wider value in the request is reduced. The Commissioner's view is that the complainant's request would not fulfil any wider environmental issue.
30. Therefore, in all the circumstances of the case the Commissioner finds that the public interest in maintaining the exception in regulation 12(4)(b) outweighs the public interest in disclosure.

## Right of appeal

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31. 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: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

32. 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.
33. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**