

Environmental Information Regulations 2004 (EIR) Decision notice

Date: 10 May 2023

Public Authority: Harrogate Borough Council
Address: Civic Centre
St Luke's Avenue
Harrogate
HG1 2AE

Decision (including any steps ordered)

1. The complainant has requested information from the Harrogate Borough Council (the Council) relating to enforcement action taken by the Council and correspondences regarding said enforcement action.
2. The Commissioner's decision is that the Council was entitled to rely on regulation 12(4)(b) when refusing to comply with this request.
3. The Commissioner has also decided that the Council has complied with regulation 9.
4. The Commissioner does not require further steps.

Request and response

5. On 18 October 2022, the complainant wrote to the Council and requested information in the following terms:

"I am raising a Freedom of Information request on any enforcements undertaken by Harrogate Borough Council against any business on the Hambleton Grove Industrial Estate since 2016. This is not exclusive to the one it is alleged is active."
6. The complainant further wrote to the Council on 20 October 2022, requesting further information in the following terms:

"Also, any correspondence with any individual or organisation as regards any enforcement."

7. The Council provided its final response on 19 January 2023. It stated that that the request was being refused under Regulation 12(4)(b).
8. Following an internal review the Council wrote to the complainant on 17 February 2023. It stated that it was upholding its original decision.

Scope of the case

9. The complainant contacted the Commissioner on 29 January 2023 to complain about the way their request for information had been handled.
10. The Commissioner considers that the scope of his investigation is to consider whether the Council was entitled to rely on Regulation 12(4)(b) when refusing this request.

Reasons for decision

Is the requested information environmental?

11. Regulation 2(1) of the EIR defines environmental information as being information on:
 - (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
 - (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
 - (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;
12. The requested information relates to the operation of Hambleton Grove industrial park including planning control and environmental health

control. These are clearly a measures affecting or likely to affect the elements and factors referred to in Regulation 2(1)(b) or (c).

13. The Commissioner therefore finds that the information is environmental information, and that the Council was correct to consider it under the EIR.

Regulation 12(4)(b) of the EIR – manifestly unreasonable

14. 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. 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. The Commissioner has published guidance¹ on regulation 12(4)(b). In this instance, the Council has cited cost as the basis of the request's manifest unreasonableness.
15. The Freedom of Information and Data Protection (Appropriate Limit and Fees) sets out an appropriate limit for responding to requests for information under FOIA. The limit for local authorities is £450, calculated at £25 per hour. This applies a time limit of 18 hours. Where the authority estimates that responding to a request will exceed this limit the authority is not under a duty to respond to the request.
16. 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 equivalent figures 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.
17. In estimating the time and burden which it would take to respond to a request, the authority can consider the time taken to:
 - determine whether it holds the information

¹ <https://ico.org.uk/media/for-organisations/documents/1615/manifestly-unreasonable-requests.pdf>

- locate the information, or a document which may contain the information
 - retrieve the information, or a document which may contain the information, and
 - extract the information from a document containing it.
18. Where a public authority claims that Regulation 12(4)(b) is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit. This is in line with the duty under Regulation 9(1) of the EIR.
 19. The Council explained that the request spanned over a 6 year period and any information captured was held on multiple databases and amounted to over 1,000 pages. The Council confirmed it was able to locate information within the scope of the request, however this alone had taken 7 hours of staff time.
 20. It further explained that due to the nature of the request, the 1,000 pages which contain correspondence would need to be reviewed and redacted by officers, which could take in excess of 40 hours.
 21. The Council further advised that the time to review and make relevant redactions would result in a large cost placed on the Council and diversion of resources, making the request manifestly unreasonable and burdensome.
 22. The Commissioner acknowledges that it would take a large amount of time to locate, review and redact 1,000 pages of information in order to comply with the request. He will now go onto consider whether the public interest in the requested information outweighs the exception applied.

Public interest test

23. The public interest test will consider, whether in the circumstances of this case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
24. There will always be some public interest in disclosure to promote transparency and accountability of public authorities, greater public awareness and understanding of environmental matters, a free exchange of views, and more effective public participation, all of which ultimately contribute to a better environment.

25. The Council advised that due to the breadth of the request, information captures would be so wide, it would of little value to the public. It would include general correspondences which have little bearing or informative context on the outcome of enforcement investigations.
26. The Council did acknowledge that the complainant and other members of the public may have concerns with the operation of business on the Hambleton Grove business park, however the extent of the request (which went beyond the outcome of enforcement investigations) and the limited resources available would result in diversion of resources and a large cost to comply with the request. The Council advised that the benefit in withholding the requested information outweigh the benefit in disclosing the requested information.
27. The Commissioner is satisfied that for the Council to respond to the request, the time it would take is significant and disproportionate compared to the public interest in the disclosure of the information. The Commissioner is therefore satisfied that, in this case, the balance of the public interest lies in the exception being maintained.
28. The Commissioner is also satisfied that the Council complied with its duty under regulation 9, by agreeing to provide a partial response to a refined request.

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.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

**Catherine Fletcher
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**