

Environmental Impact Regulations 2004 (EIR)

Decision notice

Date: 1 February 2024

Public Authority: Withernsea Town Council
Address: The Council Chamber
Municipal Buildings
Queen Street
Withernsea
East Riding of Yorkshire
HU19 2HH

Decision (including any steps ordered)

1. The complainant requested information held by Withernsea Town Council (the Council) relating to the maintenance of trees and hedges.
2. The Council refused the request, citing regulation 12(4)(b) of the EIR, which concerns manifestly unreasonable requests.
3. The Commissioner's decision is that the Council was not entitled to rely on regulation 12(4)(b) to refuse to comply with the request.
4. However, following a First Tier Tribunal appeal of a previous request, the Council has provided the complainant with all recorded information falling within the scope of the current request.
5. The Commissioner does not therefore order the Council to take any steps.

Request and response

6. On 23 January 2023, the complainant wrote to the Council and requested the following information [numbered for ease of reference]:
 1. "A request for a copy of the dated reports, including recommendations from persons whom the TC have been in contact with in relation to the condition and future management of the Playing Field Trees during the past four years from the date shown above. This should include all consultants, the East Riding of Yorkshire Tree Officer, whom I suggested in correspondence to the Withernsea Town Council (TC) should be contacted and costings for any services and work they and others have carried out. Also to include the report from the consultant whom attended my neighbour at [address redacted by the ICO] and advised me of his assessment that the trees had Ash Die back, contradicting the TC's statement this does not exist. I request this is explained. Also what action was taken when I communicated with the TC on behalf of [name of individual redacted by the ICO], who first identified the Ash Die Back disease and who never received any contact from the TC. In addition when the above persons were in attendance or contacted.
 2. Reports, feedback and recommendations involving TC members decisions relating to the above paragraph tree issues and copies of the minutes for confirmation they are aware. Also a copy of the TC management plan recommended in Government Guidance when Ash Die Back is identified.
 3. In respect of the last trimming of the hedge, a request for confirmation the TC members agreed to the work being carried out during the bird nesting season, in the week prior to the Annual Withernsea AFC Junior Football Tournament and the club requiring permission from the TC to hold a tournament, as explained in the TC's correspondence to me. Confirmation the TC members were aware of a complaint prompting the procedure to trim the hedge and that the matter had been addressed through the TC's Complaints procedures. Why residents were not consulted about their opinions for trimming the hedge.
 4. Copies of the minutes from the Personal and management sub committee meetings held in the past 3 years from the date shown above, excluding the personnel staffing.
 5. A copy of the TC's maintenance responsibilities together with the accompanying risk assessments to include timescales and the Health and Safety Checks for these responsibilities."

7. The Council wrote to the complainant on 13 February 2023, refusing the request stating, "The Council considers that this request, when taken into account with previous request/s made by yourself of a similar nature, or containing comparable information are considered to be repeated and vexatious."
8. The complainant requested an internal review on 9 June 2023. The Council responded on 19 June 2023 but did not change its position.

Scope of the case

9. The Council did not cite any section of FOIA as its grounds for refusing the complainant's request. However, based on the wording of its response to the complainant, it appears that it intended to apply section 14 (vexatious or repeated requests) to the request.
10. The Commissioner has determined that the information being requested constitutes environmental information as defined in regulation 2(1) of the EIR.
11. The equivalent exception within the EIR is regulation 12(4)(b) (manifestly unreasonable requests), therefore the Commissioner considers that the scope of the case is to determine if the Council was correct to apply regulation 12(4)(b) of the EIR to the request of 23 January 2023.

Reasons for decision

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

12. 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. The Commissioner has [published guidance](#) on regulation 12(4)(b).
13. Within its submission to the Commissioner, the Council stated that "[It] considered the request dated 23rd January 2023 as repeated and vexatious due to the volume and regularity of requests we had already received requesting the information that had already been supplied."

14. It is clear from the representations of both the complainant and Council, that there is a history of requests on the same subject matter which stem back a number of years.
15. The Council has argued that the request is manifestly unreasonable because the complainant is requesting information previously provided.
16. Within its submission to the Commissioner, it listed the five parts of the request and, for each part, confirmed the dates the information, if held, was provided to the complainant.
17. These dates fall both before and after the date the request was refused. It can therefore be concluded that the Council had not previously provided all recorded information falling within the scope of the request of 23 January 2023.
18. The decision of the Commissioner is therefore that the Council was not entitled to rely on regulation 12(4)(b) to refuse the request, as some information falling within the scope of the request had not previously been provided to the complainant.
19. In the course of his investigation, the Commissioner has received information from the Council which confirms that, following a First Tier Tribunal appeal of a previous request, it has provided the complainant with all information falling within the scope of his request of 23 January 2023.
20. The Commissioner does not therefore order the Council to take any steps.

Right of appeal

21. 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

22. 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.
23. 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

Ben Tomes
Group Manager
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Water Lane
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Cheshire
SK9 5AF