

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

Decision notice

Date: 27 September 2011

Public Authority: Rochford District Council
Address: Council Offices
South Street
Rochford
SS4 1BW

Decision (including any steps ordered)

1. The complainant requested various categories of information relating to Rochford District Council's Core Strategy for planning, the Sustainability Appraisal of that strategy and other matters relating to planning issues in the Rochford area. The Council stated that the request was manifestly unreasonable and refused to comply. The Commissioner's decision is that Rochford Council appropriately applied the provisions of the Environmental Information Regulations 2004 and he requires no steps to be taken.

Request and response

2. On 9 December 2010, the complainant wrote to Rochford District Council (the "Council") and requested information in the following terms:

"This is a request for information under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. This request is made by [name of company] on the instructions of [name of company]."

Please send to us the information that is requested in the Table in Appendix 1 to this letter..."

The Table is attached to this notice at Annex 1.

3. The Council responded on 31 January 2011. It stated that it had become evident through the work it done to compile information relevant to the request that the request of 9 December 2010 was manifestly unreasonable. It stated that regulation 12(4)(b) of the Environmental Information Regulations 2004 was engaged and refused the request. The Council's decision was on the basis of the time required to comply with the request, which it estimated at 230 hours (later amended to 290 hours).
4. Following an internal review the Council wrote to the complainant on 18 February 2011. It maintained its position that the request was manifestly unreasonable and provided further detail of the factors it had considered when balancing the public interest test. The Council stated that the bulk of the work involved in complying with the request would fall on its Planning Policy team which comprised of four planning officers and one part time administrator. It said amount of time required to comply with the request would have a significant impact on the core work of that team.

Scope of the case

5. The complainant contacted the Information Commissioner (the "Commissioner") to complain about the way his request for information had been handled. The complainant specifically referred to concerns about the Council's records management and asked the Commissioner to consider the points it made in its letter to the Council of 2 February 2011. In that letter the complainant referred to the Code of Practice issued under section 46 of the Freedom of Information Act 2000 (the "Act") which relates to the "keeping, management and destruction of records" and noted concerns that the Council could not readily access the requested information.
6. The Commissioner has seen no evidence that the Council has not complied with the recommendations set out in the Code of Practice and he has gone on to consider whether the Council was correct to determine that the request was manifestly unreasonable.
7. The Commissioner was aware that there was some correspondence between the Council and the complainant during which the possibility of refining the scope of the request was discussed. Ultimately the complainant asked the Council to comply with the request in full and this the basis on which the Commissioner made his decision.

Reasons for decision

8. Regulation 12(4)(b) of the EIR states a public authority may refuse to disclose environmental information requested if the request is manifestly unreasonable. This exception to disclosure is subject to the public interest test and a public authority may only refuse to disclose information where the public interest in maintaining the exception outweighs the public interest in disclosure.
9. In this case the Council's position is that the time required to comply with the request makes it manifestly unreasonable. In effect it said that to comply with the request would place an unreasonable burden on its resources in terms of expense and distraction.
10. The EIR do not contain a definition of the term 'manifestly unreasonable' but the Commissioner's opinion is that 'manifestly' implies that a request should be obviously or clearly unreasonable. In this case the focus is on the time required to comply with the request. There is no direct equivalent in the EIR of section 12 of the Act, which places a limit on the time a public authority need spend on compliance with a request (24 hours for central government organisations and 18 hours for other public authorities, such as the Council). However, the Commissioner considers that, if the Council is able to demonstrate the time (and therefore the expense) of complying with the request is obviously unreasonable, regulation 12(4)(b) will be engaged.
11. The Council said that it had estimated that to comply with the request would take approximately 290 hours, if not longer, and said that it had been difficult to be more precise. The Commissioner accepts that the Council is only able to provide an estimate of the time involved.
12. When considering the arguments put forward by the Council the Commissioner was mindful that the request was wide ranging, included requests for information on very specific topics, extended back a number of years (to at least 2005) and covered information in a variety of formats; eg correspondence, briefing documents, meeting notes, agendas and meetings of Council committees and copies of written representations from interested parties. The Commissioner considers that the wide ranging and detailed nature of the request means that the searches required to locate relevant information are likely to be relatively time consuming. For example, using the category of information requested in the first line of the table (see Annex 1), the Commissioner considers it unlikely that the Council would be able to refer to single file or series of file in order to locate relevant information. He considers it likely that a range of sources would need to be searched and that information potentially falling within the scope of the request

would need to be considered in detail to determine whether it was relevant.

13. The Council said that its estimate of the time required to comply with the request had been shaped by the actual work that it had done up until it decided to refuse the request. It split the work into a three stage process:
 - Searching for relevant documentation.
 - Checking the documentation for relevance to the request.
 - Collating, filing and cross referencing relevant information to the tabulated request.
14. The Council said that it has already spent 115 hours dealing with the request. The work was undertaken by three members of the Council's planning team and they identified over 1400 emails that had to be reviewed. The Council said that it was approximately half way through reviewing and identifying relevant information and that it therefore estimated that it would take at least another 115 hours to complete that task. The Council provided the Commissioner with a more detailed explanation of the time it had spent on the request to date and the Commissioner is satisfied that it is reasonable. The Commissioner therefore agrees that the Council's estimate of 230 hours to search for the relevant information is reasonable.
15. The Council estimated that an additional 45 hours would be required in order to collate, file and cross reference the information with the tabulated request and a further 15 hours of the Planning Manager's timer would be required. The Council did not provide a breakdown of its estimate this additional time but the Commissioner does not consider it necessary. His view is that regulation 12(4)(b) is engaged on the basis of the 115 hours spent on compliance to date and the additional 115 hours required to search for further relevant information. In reaching his decision the Commissioner was guided by the following factors:
 - The appropriate limit in the Act is 18 hours. If a public authority estimates that to comply with a request made under the Act will exceed this limit it is not obliged to comply.
 - While there is no equivalent limit in the EIR, the Commissioner considers that the Council's estimate of the time it would take to comply to be so far in excess of the appropriate limit set out in the Act as to make the request clearly unreasonable.
 - The burden that compliance would place on the Council is obvious (230 hours = 6 weeks work for one person at 7.5 hours a day) and

would clearly distract the Council's Planning Policy team from its core duties.

16. Having determined that the request was manifestly unreasonable and that regulation 12(4)(b) was engaged the Commissioner went on to consider the public interest test. The Commissioner considers the following factors in favour of disclosure to be particularly relevant:
 - There is a strong public interest in the disclosure of environmental information in general as it promotes transparency and accountability for decisions taken by public authorities.
 - There is a strong public interest in the disclosure of information regarding planning strategies in particular because such information has an impact on the day to day lives of individuals living in a particular area. In this case the complaint is concerned with the Council's assessment of proposed housing growth locations and there is clearly a strong public interest in the disclosure of information relevant to such matters.
17. The Commissioner considers the following factor in favour of maintaining the exception to disclosure to be particularly relevant:
 - There is a strong public interest in having a local planning authority that is free to continue with its core duties (considering planning applications for new development, taking appropriate action where planning permission has not been granted and for setting the policy framework against which planning applications are judged) without the expense and distraction of dealing with this request.
18. The Commissioner's decision in this case is that while there is undoubted public interest in the disclosure of information relevant to the request, the public interest is best served by allowing the Council to continue to with its core planning duties without the significant distraction, in terms of time and expense, compliance with the request would present. The Commissioner is mindful of the significant amount of time that would be required to respond to the request and the limited resources available to the Council.

Right of appeal

19. 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: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

20. 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.
21. 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