

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 9 April 2019

Public Authority: East Northamptonshire Council
Address: Cedar Drive
Thrapston
Northamptonshire
NN14 4LZ

Decision (including any steps ordered)

1. The complainant has made three requests for information with regards to emails and meetings between the planning department and other departments/ officers at East Northamptonshire Council (the council) and copies of certain rules and regulations. The council refused the requests under regulation 12(4)(b) as it considered them to be manifestly unreasonable.
2. The Commissioner's decision is that regulation 12(4)(b) of the EIR is engaged.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 4 June 2018 the complainant made the following requests to the council (recorded under council ref: 14504)
 1. *"Meetings and e mails between planning and planning policy and housing policy from 01/03/2018"*
 2. *Meetings and e mails between the CEO and planning and planning policy and housing policy from 01/03/2018*
 3. *Meetings and e mails between Northampton council officers staff etc and the CEO, planning and planning policy and housing policy from 01/03/2018"*
5. The council requested clarification to the subject matter of the request on the 5 June 2018 which the complainant provided on the same day. The complainant advised that it was with regards to Planning Application 27/02426/OUT, the site known as Middle School Kingscliffe owned by the council.
6. On 12 June 2018, the complainant then made two further information requests to the council. The first being (recorded under council ref: 14519):

"Please can you send me the rules and regulations regarding your standing orders protocol etc as above for your planning department"
7. And the second (recorded under council ref: 14520):

"Please send me minutes of the meetings and discussions between Mr [name redacted] and [name redacted/Name Redacted] and [name redacted] on the above application and County Council Middle school site"
8. The council responded to all three requests on 25 June 2018. It refused them all under regulation 12(4)(b) of the EIR as it considered them to be manifestly unreasonable on the grounds that they are vexatious.
9. The complainant requested an internal review on the 25 June 2018 disputing the council's refusal of the requests.
10. The council provided the outcome of its review on the 4 July 2018 upholding its refusal.

Scope of the case

11. The complainant contacted the Commissioner on 10 July 2018 to complain about the council refusing his requests.
12. The Commissioner considers the scope of the case is to determine whether the council can rely on regulation 12(4)(b) of the EIR to refuse the three requests as manifestly unreasonable.

Reasons for decision

Regulation 12(4)(b) of the EIR - Manifestly Unreasonable

13. 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.
14. The Commissioner recognises that, on occasion, there is no material difference between a request that is vexatious under section 14(1) of the Freedom of Information Act 2000 (the FOIA) and a request that is manifestly unreasonable on vexatious grounds under the EIR. The Commissioner has therefore considered the extent to which the request could be considered vexatious.
15. The term 'vexatious' is not defined in the legislation. In *Information Commissioner vs Devon County Council and Dransfield*¹ the Upper Tribunal took the view that the ordinary dictionary definition of the word is only of limited use, because the question of whether a request is vexatious ultimately depends upon the circumstances surrounding that request. The Tribunal concluded that 'vexatious' could be defined as "...manifestly unjustified, inappropriate or improper use of a formal procedure" (paragraph 27). The decision clearly established that the

¹ <https://www.judiciary.uk/judgments/info-commissioner-devon-county-council-tribunal-decision-07022013/>

concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.

16. In the Dransfield case, the Upper Tribunal stressed the

"importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not. Emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).

17. In this case the council has advised the Commissioner that its decision to apply regulation 12(4)(b) to these requests was not solely based on the FOIA/EIR requests alone, but also on the complainant's other requests and communications on this subject matter, as they form part of the whole picture.

18. The council has provided the Commissioner with reasons as to why it has applied regulation 12(4)(b) of the EIR.

19. The council has stated that five information requests have been received since March 2018 relating to the same topic of a planning application. One request was later withdrawn by the complainant after the council identified it to be manifestly unreasonable due to the cost/burden on the council. Even though withdrawn, the council still needed to take time to provide an initial response to the complainant.

20. The council considers that submitting five requests between March and June about the same issues are overlapping and does not allow appropriate time for it to respond before receiving a further request creating a burden on its resources in having to handle these requests.

21. One of these requests (council ref: 14504) being considered in this case, the council has advised the Commissioner, will result in the requirement to analyse, assess and redact 689 emails. If these took 2.5 minutes per email, this will create 29 hours of work and will have a significant impact on the council's ability to perform its other key tasks and statutory duties. This is on top of having to respond to the other requests and correspondence received from the complainant.

22. Being in receipt of five information requests from the same person, on related topics, inside a few months, the Commissioner is of the view that this is going to cause some burden to be placed on the council's resources in having to deal with them. In this instance, it does not leave adequate time for the council to provide responses before having to consider further requests.

23. The council has informed the Commissioner that its Planning Department and Head of Planning Services also receive repeated emails and the complainant does not allow time for responses to be made or for actions relating to requests to be carried out before being sent more.
24. The council states that it has asked the complainant to stop, so far to no avail, and a number of substantial emails have been received since the beginning of 2018. Also, there have been frequent requests for (what the council considers) unnecessary meetings with planning officers.
25. The council has provided the Commissioner with other examples of email correspondence from the complainant which it considers demonstrates demanding and aggressive behaviour (e.g. verbal responses requested to written enquiries, reference to the use of FOI/ Ombudsman (which the council considers is clearly done as a threat)), block capitals and excessive punctuation (the council states this is the email equivalent to shouting), reference to council policies not being up to standard, and more.
26. The council has explained to the Commissioner that it can evidence the amount of email correspondence received from the complainant, but the burden from telephone calls was much higher and more frequent. However, the council is unable to quantify with documented evidence, the number of telephone calls it has received from the complainant during the first half of 2018.
27. This is because the council does not record telephone conversations and no longer holds statistical information as it no longer holds the licence for its old telephone system. It is also unable to extract the statistical information from its new system as training on how to do this has not yet been given.
28. Even so, the council state that the telephone calls do add to the burden being placed on its resources in having to deal with the complainant even without being able to evidence the volume.
29. The Commissioner has been provided with a large volume of correspondence that has been sent between the council and the complainant, so it is clear to see that significant time has been spent corresponding with the complainant.
30. The council has advised the Commissioner that a substantial amount of information is on its planning portal and all the usual types of planning documents are available to him through this source.

31. The Commissioner sees that a planning matter can cause a large volume of correspondence to be generated and that frustrations can occur, as planning decisions can have a significant impact on individuals and communities.
32. However, the Commissioner must also consider the impact and burden that can be placed on a council in having to deal with voluminous amounts of correspondence from one individual and how this can divert its resources in carrying out its other day to day responsibilities.
33. In considering the amount of correspondence the council has received from the complainant and that the council estimates it would create 29 hours to deal with one of the three requests clearly demonstrates that there is going to be a significant burden being placed on the council's resources in having to respond.
34. On this basis the Commissioner finds regulation 12(4)(b) of the EIR is engaged to the requests.
35. After considering the above, the Commissioner finds that regulation 12(4)(b) of the EIR is engaged to this request.

Public Interest Test

36. Regulation 12(4)(b) of the EIR is subject to the public interest test at regulation 12(1)(b) of the EIR which states that information can only be withheld if in all circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosure.

Public interest arguments in favour of disclosure

37. The complainant has stated he is concerned that there is a lack of transparency from the council.
38. The council has told the Commissioner that it recognises the presumption in favour of disclosure with the EIR. It recognises that transparency relating to information about planning applications, in general, can have an impact on informing individuals and the wider community on such matters.

Public interest in maintaining the exception

39. The council has told the Commissioner that although there is always going to be a public interest in planning matters, this has to be balanced against the burden being placed on a public authorities resources and any stress to its employees in having to deal with individuals correspondence and considers that this is a case where the balance in maintaining the exception outweighs any rights to disclosure.

40. The council also considers that any public interest in disclosure is also weakened due to the fact that the complainant's contact is for personal interests as he is the planning applicant and his planning application has been recommended for refusal, pending further information.
41. The council points out that there is a substantial amount of information on its planning portal and all the usual types of planning documents are available to him through this source.

Conclusion

42. The Commissioner is aware that there is always going to be public interest on decisions being made by public authorities. Transparency plays a key part in keeping the public informed and engaged as to what decisions are being made, and in this particular case, planning decisions.
43. The Commissioner is always mindful of the impact regulation 12(4)(b) of the EIR has on a complainant's rights to obtain information from a public authority.
44. The council's consideration that personal interests may carry less public interest is not always the case, for example, there would be strong public interest to know your personal case around a planning matter is being dealt with in the correct manner.
45. However, in this case, the Commissioner has had to balance this against the impact, burden and stress being placed on the council and its employees in having to deal with the correspondence it is receiving.
46. The Commissioner considers the five requests made in the time period of three months and the amount of other correspondence being received has added significant burden and stress on the council and its employees in having to deal with this sustained contact.
47. The Commissioner has also taken into account the fact that there is a planning portal in which planning information can be accessed.
48. The Commissioner, in consideration of the above, finds that the weight in maintaining regulation 12(4)(b) of the EIR outweighs any legitimate public interest in disclosure.
49. Therefore the Commissioner's decision is that regulation 12(4)(b) of the EIR is maintained.

Right of appeal

50. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

51. 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.
52. 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