

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 24 June 2020

Public Authority: Committee on Climate Change
Address: 151 Buckingham Palace Road
London
SW1W 9SZ

Decision (including any steps ordered)

1. The complainant requested information from the Committee on Climate Change ("the CCC") which related to the CCC's publication *Net Zero - The UK's contribution to stopping global warming*. Specifically, he requested spreadsheets that had been used to compile information on a document which the CCC had provided to him in response to an earlier request. The CCC refused the request as being manifestly unreasonable, on grounds of cost and diversion of resources, under the exception at regulation 12(4)(b) of the EIR.
2. The Commissioner's decision is that regulation 12(4)(b) is not engaged in respect of the request.
3. The Commissioner requires the CCC to take the following step to ensure compliance with the legislation.
 - Issue a fresh response to the complainant which does not rely on regulation 12(4)(b) in respect of the request.
4. The CCC must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background to the request

5. In June 2019, the complainant requested information from the CCC after reading its publication *Net Zero - The UK's contribution to stopping global warming*¹, published by the CCC in May 2019.
6. Specifically, he requested information relating to some of the document's calculations and conclusions.
7. The CCC provided him with some information, including a spreadsheet entitled *Net Zero costs dataset*. This previous thread of requests and responses can be viewed on the website What Do They Know².
8. Subsequently, on 16 July 2019, the complainant made enquiries about the "capital costs, operating costs and lifetimes" of each component line on the Net Zero costs dataset, and how these values had been arrived at. He then stated, on 18 July 2019, that if the Net Zero costs dataset was an extract from a larger spreadsheet, he would like to receive it.
9. In responding to these enquiries, the CCC stated that the Net Zero costs dataset was not an extract from a larger spreadsheet. It informed him that some relevant information was publicly available. It described some of its processes in compiling information, but stated that it could not provide the capital costs, operating costs and lifetimes of each component line in the Net Zero costs dataset, since the information was obtained from multiple models, including, by way of example, 12 spreadsheets relating to the surface transport sector which, in themselves, were fed into by multiple models.
10. These enquiries, and the CCC's responses, have been considered further in the Other Matters section of this notice.

Request and response

11. On 23 August 2019, the complainant requested the following information from the CCC:

¹ <https://www.theccc.org.uk/wp-content/uploads/2019/05/Net-Zero-The-UKs-contribution-to-stopping-global-warming.pdf>

² https://www.whatdotheyknow.com/request/cost_of_net_zero#incoming-1397041

"(a) the 12 spreadsheets you describe for the road transport sector [and]

(b) the equivalent spreadsheets for the power sector and the housing sector".

12. On 23 September 2019, the CCC refused the request, citing both the exception at regulation 12(4)(d) of the EIR – material in the course of completion – and/or regulation 12(4)(b) – manifestly unreasonable on grounds of cost.
13. The complainant requested an internal review on 24 September 2019.
14. The CCC sent him the outcome of its internal review on 23 October 2019. It withdrew its reliance on regulation 12(4)(d) but upheld its application of regulation 12(4)(b), on grounds of cost and diversion of resources.

Scope of the case

15. The complainant contacted the Commissioner on 20 September 2019, and subsequently confirmed that he wished the Commissioner to investigate the CCC's application of regulation 12(4)(b) to his request.
16. This decision covers whether the CCC correctly refused the request as manifestly unreasonable, under regulation 12(4)(b) of the EIR.

Reasons for decision

Regulation 12(4)(b) – manifestly unreasonable requests

17. 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.

Regulation 2(1) of the EIR - is the information environmental?

18. The Commissioner has first considered whether the information being requested is environmental, within the definition at regulation 2(1) of the EIR.
19. Regulation 2(1) of the EIR provides the following definition of environmental information:

"...any information in written, visual, aural, electronic or any other material form 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) and (b) as well as measures or activities designed to protect those elements..."

20. It is important to ensure that requests for information are handled under the correct access regime. This is particularly important when refusing to provide information, since the reasons why information can be withheld under FOIA are different from the reasons why information can be withheld under the EIR. In addition, there are some procedural differences affecting how requests should be handled.
21. The Commissioner's well-established view is that public authorities should adopt a broad interpretation of environmental information, in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact.
22. The Commissioner notes that the requested information comprises information about emissions, and preventing global warming. She is satisfied that the information being requested would fall within the definition at regulation 2(1)(b) and/or 2(1)(c).
23. The Commissioner is satisfied that the requests fell to be considered under the EIR.

Manifestly unreasonable on grounds of cost and diversion of resources

24. Regulation 12(4)(b) will typically apply in one of two sets of circumstances; either where a request is vexatious, or where compliance with a request means a public authority would incur an unreasonable level of costs, or an unreasonable diversion of resources. In this case, the CCC argued the latter, namely that meeting the full terms of the

request would place an unjustifiable demand by diverting its resources (a small team) away from its core functions.

25. In her guidance³ on this exception, the Commissioner says at paragraph 19 that in assessing whether the cost or burden of dealing with a request is too great, public authorities will need to consider the proportionality of the burden or costs involved and decide whether they are clearly or obviously unreasonable. The Commissioner considered this will mean taking into account all the circumstances of the case, including:
- 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 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; and
 - 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.
26. The Commissioner considers that public authorities may be required to accept a greater burden in providing environmental information than other information. Where it is found to be engaged, regulation 12(4)(b) of the EIR is also qualified by the public interest test. Any exercise carried out to determine whether an exception applies must take into account the EIR's express presumption in favour of disclosure under regulation 12(2).
27. The considerations associated with the application of regulation 12(4)(b) of the EIR on the grounds of cost are broader than its closest relative in the FOIA, section 12, which applies when the "cost of compliance exceeds the appropriate limit". However, while recognising the differences between section 12 of the FOIA and regulation 12(4)(b), the Commissioner considers that the "appropriate limit" in section 12 may serve as a useful guide when considering whether a request is

³ <https://ico.org.uk/media/for-organisations/documents/1615/manifestly-unreasonable-requests.pdf>

manifestly unreasonable on the basis of costs. This is because the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations"), which have the effect of prescribing the "appropriate limit," are taken to give a clear indication of what Parliament considers to be a reasonable charge for staff time.

28. The Fees Regulations state that a public authority's estimate that compliance would exceed the appropriate limit can only take into account the costs it would reasonably expect to incur in:
 - determining whether it holds the requested information;
 - locating the information;
 - retrieving the information; and
 - extracting the information.
29. The Fees Regulations confirm that the costs associated with these activities should be worked out at a standard rate of £25 per hour per person. For central government public authorities the cost limit is £600, and £450 for non-central government.
30. In addition, as noted in the Commissioner's guidance referenced previously, the costs of considering whether information is exempt, and in preparing it for disclosure, may also be taken into account under regulation 12(4)(b), which is not the case under section 12 of the FOIA.

Is the exception engaged?

31. The complainant explained to the Commissioner that, in making his request, he wished to be provided with the spreadsheets which the CCC had used in making its calculations, and not with information that was extracted from them nor compiled especially for him.
32. Having been made aware by the CCC that there were 12 spreadsheets relating to the road transport sector, it is his position that, even if 100 spreadsheets had been used in total in respect of the road transport, power and housing sectors, it would be unlikely to take a manifestly unreasonable amount of time to compile them into a zip folder and send them to him.
33. The Commissioner, in line with her normal approach, wrote to the CCC and asked it to justify its reliance on regulation 12(4)(b), specifically in terms of the time it would take to comply with the request. In her letter, she asked the CCC to address the fact that the complainant appeared to be requesting entire spreadsheets, such as could be termed "raw data", in its response.

34. In responding to the Commissioner, the CCC did refer to the potential consequences of providing entire spreadsheets in its public interest arguments, including concerns over disclosing raw data without any accompanying guidance. However, the Commissioner is not satisfied that these arguments relate to the application, or engagement, of regulation 12(4)(b), which is the only exception being relied on by the CCC.
35. The Commissioner notes that the evidence provided by the CCC which relates to regulation 12(4)(b) – that is, to the cost of compliance and the diversion of its resources – only covers the time it would take to extract and compile data. While it has provided evidence that there are approximately 30 spreadsheets which relate to the sectors referred to in the request, having reviewed this evidence, the Commissioner cannot see that the CCC has estimated or explained the amount of time it would take simply to disclose all of these spreadsheets in their raw form.
36. The Commissioner's role in considering the application of regulation 12(4)(b) is simply to determine whether the CCC has demonstrated that complying with the requests would be manifestly unreasonable.
37. In this case, as the Commissioner indicated to the CCC at the outset of her investigation, it is evident that the complainant was requesting a number of spreadsheets in their entirety.
38. The CCC appears to have understood that the complainant wanted whole spreadsheets; hence, it provided some public interest arguments relating to raw data. However, the evidence that it provided which related to regulation 12(4)(b), related only to the time it would take to extract and compile information from the spreadsheets. The Commissioner is unable to find that the evidence supports the view that disclosing the spreadsheets in their entirety would be manifestly unreasonable in terms of time and of the diversion of its staff away from its core functions.
39. The Commissioner is not persuaded that the CCC has demonstrated that disclosing the requested information to the complainant would take such a lengthy amount of time, or create such a burden, as for the requests to be considered manifestly unreasonable.
40. She has determined that the exception at regulation 12(4)(b) was not engaged with regard to the request. It has therefore not been necessary to consider any public interest test with regard to whether or not the exception should be maintained.

41. The Commissioner orders the CCC to make a fresh response to the complainant, which does not rely on regulation 12(4)(b), with regard to his request.

Other matters

42. The Commissioner is aware, as noted in the Background section of this notice, that on 16 July 2019 and 18 July 2019 the complainant made enquiries about values on the Net Zero costs database spreadsheet.
43. She notes that the CCC made efforts to respond to these enquiries under the EIR.
44. In the Commissioner's view, it would have been preferable for the CCC to seek clarification as to what was being asked for in respect of these enquiries. Specifically, the Commissioner considers that it was not possible to carry out a single, objective reading of the enquiry of 16 July 2019, and she does not consider that sufficient clarification was provided by the subsequent enquiry of 18 July 2019.
45. During the course of the investigation, the complainant has suggested that he wished to be provided with all of the spreadsheets that were used in creating the Net Zero costs dataset. As covered in this notice, he subsequently specifically requested the spreadsheets relating to the road transport, energy and housing sectors. However, confusion appears to exist at the CCC as to whether he wished data to be extracted and compiled from the multiple spreadsheets in response to his enquiry of 16 July 2019.
46. The Commissioner would therefore encourage the CCC, in issuing a fresh response to the request of 23 August 2019 as ordered in this notice, to re-visit the complainant's enquiry of 16 July 2019, and obtain clarification as to the information that he was seeking.

Right of appeal

47. 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@justice.gov.uk

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

48. 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.
49. 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
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