

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 15 February 2023

Public Authority: Norfolk County Council
Address: County Hall
Martineau Lane
Norwich
Norfolk
NR12DH

Decision (including any steps ordered)

1. The complainant requested information relating to legal advice sought about the 'Norwich Western Link Road' project from Norfolk County Council ('the Council'). This was a refined request over a shorter time period, for the same information as their previous request, which became the subject of a decision notice issued under case reference IC-129579-H6R9 ¹. As with the previous request, the Council refused this refined request on the basis of regulation 12(4)(b) (manifestly unreasonable) with reference to the likelihood of regulation 12(5)(b) (course of justice) being engaged for much of the information captured by the request.
2. As with the previous request, the Commissioner's decision is that the Council was entitled to rely on regulation 12(4)(b) to refuse the request.
3. The Commissioner does not require the Council to take any steps.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022700/ic-129579-h6r9.pdf> (ico.org.uk)

Request and response

4. On 9 November 2022, the complainant wrote to the Council and requested the following information:

"Please produce a copy of all written legal advice /opinion **from external** legal counsel (solicitors, barristers or other legal professional) on issues relating to the planning aspects of the Norwich Western Link Road project that came into existence during the period 1/10/21 and 1/11/22."

5. The Council responded on 29 November 2022. It referred the complainant to its previous decision notice referenced above and added:

"Notwithstanding your revised scope, it is the County Council's view that this nevertheless constitutes a manifestly unreasonable request under regulation 12(4)(b), and that the information requested falls under regulation 12(5)(b) on the grounds that it carries legal professional privilege."

6. Following an internal review the Council wrote to the complainant on 14 December 2022. It confirmed that its primary grounds for refusal was regulation 12(4)(b). However, it further confirmed that the recent decision notice provided a strong indication that its reliance on regulation 12(5)(b) would be accepted. It further stated that a prior refusal under regulation 12(4)(b) does not preclude further reliance on the exception stating that:

"The revised timespan is still by no means insignificant, and now covers a period which is closer to the forthcoming planning application, when there is likely to have been even greater engagement with the county council's legal advisors."

Reasons for decision

Regulation 12(4)(B) – Manifestly unreasonable requests

7. Regulation 12(4)(b) states that:

"For the purpose s of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –

(b) the request for information is manifestly unreasonable;"

8. The Commissioner has issued public guidance² on the application of regulation 12(4)(b). This guidance contains the Commissioner's definition of the regulation, which is taken to apply in circumstances where either the request is 1) vexatious, or 2) where the cost of compliance with the request would be too great. If engaged, the exception is subject to a public interest test.
9. In this case, as with the original complaint, the Council considers that circumstance 2) is applicable.
10. The Commissioner has not included a lengthy discussion of regulation 12(4)(b) here, as paragraphs 14 to 20 of the original decision notice are transposable in this case.
11. However, taking the specific details of this request, the Commissioner notes that whereas the Council had referred to in excess of 1000 emails in respect of the original, unrefined request, it has identified more than 300 emails or documents potentially relevant to this refined request. Each document would need to be thoroughly reviewed in order to determine whether it fell within the specific scope of the request, and to what extent exceptions to disclosure may apply. It has stated that a very conservative estimate based on an average of five minutes per item, would require a minimum of 27 hours work.
12. As with the discussion of regulation 12(4)(b), the Commissioner has not included a lengthy analysis of the whether the exception is engaged and the public interest arguments in this case, as he considers the analysis outlined in paragraphs 23 to 28 of the original decision notice are transposable to this complaint. The Commissioner has therefore concluded that the Council was correct to refuse this refined request on the basis of regulation 12(4)(b).

² <https://ico.org.uk/for-organisations/guide-to-the-environmental-information-regulations/refusing-a-request/#when-can-we-refuse-a-request-for-environmental-information-3>

Right of appeal

13. 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

14. 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.
15. 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 Dickenson
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**