

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 10 March 2023

Public Authority: Norfolk County Council
Address: County Hall
Martineau Lane
Norwich
Norfolk
NR1 2DH

Decision (including any steps ordered)

1. The complainant has requested information from Norfolk County Council ("the Council") in relation to Norwich Western Link Road. The Council refused the request on the basis of regulation 12(4)(b) of the EIR – manifestly unreasonable.
2. The Commissioner's decision is that the Council was entitled to rely on regulation 12(4)(b) to refuse the request. The Commissioner is satisfied that there has been no breach of regulation 9 of the EIR, as the Council offered sufficient advice and assistance to the complainant. However, as the Council failed to respond to the requests within 20 working days, it has breached regulation 5(2) of the EIR.
3. The Commissioner does not require any steps as a result of this decision notice.

Request and response

4. On 9 November 2022, the complainant wrote to the Council on four separate occasions and requested information in the following terms:

"All emails and letters passing between Norfolk County Council's Norwich Western Link Road Project Team's and Natural England that concern bats, covering the period 1st March to 1st November 2022 and to include all reports and records referred to within the said written communication."

"All emails and letters passing between Norfolk County Council's Norwich Western Link Road Project Team's and the Environment Agency that concern the construction of a proposed viaduct over the River Wensum SAC covering the period 1st March to 1st November 2022 and to include all reports and records to within the said written communication."

"All emails and letters passing between Norfolk County Council's Norwich Western Link Road Project Team's and the NWL Bat Advisory Group that concern bats covering the period 1st March to 1st November 2022 and to include all reports and records referred to within the said written communication."

"All emails and letters passing between Norfolk County Council's Norwich Western Link Road Project Team's and the NWL Local Highways Authority that concern planning issues relating to the proposed construction of the Norwich Western Link Road for the period 1 March to 1st November 2022 and to include all reports and records referred to within the said written communication."

5. On 14 December 2022, the complainant contacted the Council to advise that they were still waiting for a response to their requests.
6. On 15 December 2022, the Council responded to the complainant, explaining that it had not received the four requests sent on 9 November 2022.
7. The Council responded to the four requests on 14 February 2023. It explained that it was aggregating the requests and that it was relying on regulation 12(4)(b) of the EIR – manifestly unreasonable, to withhold the requested information.
8. Following an internal review the Council wrote to the complainant on 20 February 2023. It stated that it was upholding its original position.

Background

9. The complainant has made previous requests to the Council, of a similar nature. These requests were refused under regulation 12(4)(b) of the EIR

10. The Council advised the complainant that if they refined their requests, it may enable them to be answered. It provided the complainant with a list of how they might want to consider refining the requests.
11. The complainant refined the requests, however, these were again too wide-ranging to bring within the scope of the legislation and take them out of the manifestly unreasonable category. The Council again provided information on how the requests may be refined further.
12. This decision notice considers the most recent refined requests made to the Council, dated 9 November 2022.

Scope of the case

13. The complainant contacted the Commissioner on 14 February 2023 to complain about the way their request for information had been handled.
14. The Commissioner considers that the scope of his investigation is to determine if the Council is correct to rely on regulation 12(4)(b) to withhold the requested information.

Reasons for decision

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

15. 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. The Commissioner has published guidance¹ on regulation 12(4)(b). In this case, the public authority is citing regulation 12(4)(b) on the grounds that to comply with the request would impose a significant and disproportionate burden on its resources, in terms of time and cost.
16. The Freedom of Information and Data Protection (Appropriate Limit and Fees) sets out an appropriate limit for responding to requests for

¹ <https://ico.org.uk/media/for-organisations/documents/1615/manifestly-unreasonable-requests.pdf>

information under FOIA. The limit for local authorities is £450, calculated at £25 per hour. This applies a time limit of 18 hours. Where the authority estimates that responding to a request will exceed this limit the authority is not under a duty to respond to the request.

17. Although there is no equivalent limit within the EIR, in considering the application of Regulation 12(4)(b) the Commissioner considers that public authorities may use equivalent figures as an indication of what Parliament considers to be a reasonable burden to respond to EIR requests. However, the public authority must then balance the cost calculated to respond to the request against the public value of the information which would be disclosed before concluding whether the exception is applicable.
18. In estimating the time and burden which it would take to respond to a request, the authority can consider the time taken to:
 - determine whether it holds the information
 - locate the information, or a document which may contain the information
 - retrieve the information, or a document which may contain the information, and
 - extract the information from a document containing it.
19. Where a public authority claims that Regulation 12(4)(b) is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit. This is in line with the duty under Regulation 9(1) of the EIR.
20. The Council has explained that for request 1 alone, there are over 300 emails which would need to be reviewed in order to determine if they are in scope, whether any elements fall under an exception to disclosure and what redactions may need to be applied. It went on to explain that it estimates conservatively, that each email would take five minutes to review. As there are over 300 emails, it would require at least 25 hours of officer time.
21. The Commissioner is satisfied that the Council's explanations above are justified, as it has explained the way in which it would need to review each email. Additionally, as this would only cover one of the four requests, the Commissioner is satisfied that to provide the requested information, it would exceed significantly the appropriate amount of 18 hours, therefore making the requests manifestly unreasonable.
22. Having considered the Council's position the Commissioner is satisfied that the exception in Regulation 12(4)(b) has been correctly engaged by

the Council. The Commissioner has therefore gone on to consider the public interest test required by regulation 12(1)(b).

23. The Commissioner notes that the complainant is not satisfied that the Council considered all four of the requests together and considers that the Council advised them to do this.
24. Regardless of the requests being submitted either together or separately, as they are based on similar topics, as per the requirements of the EIR, the requests can be aggregated and responded to as one request. As such, the Commissioner is satisfied that the Council correctly aggregated the requests and refused to provide the withheld information, citing regulation 12(4)(b).

Regulation 12(1)(b) – public interest test

25. The test is whether, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
26. There will always be some public interest in disclosure to promote transparency and accountability of public authorities, greater public awareness and understanding of environmental matters, a free exchange of views, and more effective public participation, all of which ultimately contribute to a better environment.
27. The complainant's request relates to planning matters regarding a specific road. There is a public interest in such matters as it will impact on those who live in those areas.
28. The Council has explained that there is a public interest in ensuring transparency in the dealings of the Council and it acknowledges that the Norwich Western Link project is high profile, and has mixed views and strong feelings both in relation to environmental factors and cost.
29. The Council has argued that to comply with the request would constitute an unreasonable diversion of resources and place a significant and unnecessary burden on the Council, over and above what it is required to do under the law.
30. The Council also explained that further substantive information will be published as part of the planning application in the early part of 2023, as there is a statutory process which will ensure that there is sufficient information available to facilitate public engagement with the process at the appropriate time.
31. The Commissioner is satisfied that for the Council to respond to the request, the time it would take is significant and disproportionate

compared to the public interest in the disclosure of the information. The Commissioner is therefore satisfied that, in this case, the balance of the public interest lies in the exception being maintained.

Regulation 9(1) – duty to provide advice and assistance

32. Broadly, Regulation 9(1) of the EIR provides that, where an authority is refusing the request because an applicant has formulated a request in too general a manner, the authority must provide advice and assistance to the requestor, insofar as it would be reasonable to expect the authority to do so, to allow them to reframe the request so that relevant information can be provided.
33. The Council advised the complainant that they would need to refine their requests. The complainant did refine the requests, however, they still requested a substantial amount of information. Additionally, the Council also explained that the requests would all need to be submitted separately, explaining that the Council has the right to aggregate the requests if they are done so within 60 days of each other and/or are similar in nature (which they are in this case). The Council explained that to comply with the request, it would involve a significant cost and diversion of resources from its work.
34. The Commissioner's decision is that the Council has therefore complied with the requirements of regulation 9(1) of the EIR.

Regulation 5(2)

35. Under regulation 5(2) of the EIR, a public authority must make environmental information available as soon as possible and no later than 20 working days after the date of receipt of the request.
36. As the Council failed to provide a response to the requests within 20 working days of receiving them, it has breached regulation 5(2) of the EIR.

Right of appeal

37. 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

38. 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.
39. 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

Michael Lea
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