

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

Date: 26 July 2023

Public Authority: Shropshire Council
Address: Shirehall
Abbey Foregate
Shrewsbury
SY2 6ND

Decision (including any steps ordered)

1. The complainant has requested background information on Shropshire Council's ('the Council') handling of the objections it has received to a proposed relief road for which it is the planning applicant. The Council refused the request on the grounds that it engaged regulation 12(4)(b) (Manifestly unreasonable request) of the EIR, due to burden. However, it referred the complainant to information on its planning portal that related to the general matters covered by the request.
2. The Commissioner's decision is that the Council was entitled to rely on regulation 12(4)(b) of the EIR to refuse the request. However, it breached regulation 9(1) of the EIR by not providing appropriate advice and assistance.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Disclose to the complainant the internal document it has identified to the Commissioner as being of likely further assistance, with appropriate redactions for any personal data; and
 - Provide the complainant with appropriate advice and assistance on how he might narrow down/refine the request so that it would not engage regulation 12(4)(b), or explain why this would not be possible.

4. The Council must take these steps 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.

Request and response

5. On 13 February 2023, the complainant wrote to the Council and requested information in the following terms:

“Review of public objections to proposed North West Relief Road 21/00924/EIA

Could you please provide me of [sic] a copy of any reports and/or emails prepared by council officers or contractors working on this project (e.g. WSP¹) that contain reviews of the objections submitted to the planning application.”

6. The Council replied on 9 March 2023. It referred the complainant to its planning portal, where it had published planning information and public objections. The complainant responded, clarifying that he had requested internal documentation showing how the objections were reviewed and what decisions were taken as to how to respond to them.
7. The Council replied on 10 March 2023, stating that all the consultation responses and objections it had so far received were published on its planning portal. It said that it was still considering those responses and would, in due course, deliver a report to the planning committee which would identify “...how representations have been considered and taken into account or not”. It expected that the report would be available in around two months.
8. On 14 March 2023, the complainant requested an internal review, explaining:

“This relates to a planning application in which Shropshire Council is both the Applicant/Developer and the Planning Authority. I am seeking to understand the decision making process that Shropshire Council as the Applicant/Developer carried out when deciding which of the many objections received to address. The correspondence from [the Council] to date has referred me to other types of information

¹ WSP Limited, which held the Council’s highway and transport engineering consultancy contract at the time of the request

but I believe that my original request was clear as to what I was seeking.”

9. On 5 May 2023, the Council provided the internal review. It refused to comply with the request, on the grounds that it engaged regulation 12(4)(b) of the EIR. It said compliance with the request would involve manually checking all related records to extract the relevant information and this would take a considerable amount of time.
10. By way of assistance, it told the complainant that it had carried out reviews of the comments and objections it had received. It referred the complainant to five particular documents on its planning portal. These set out the outcomes of its consideration, as planning applicant, of comments and objections to its planning application.

Reasons for decision

Is the requested information environmental?

11. Regulation 2(1)(c) of the EIR states that environmental information includes information on:

“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)...as well as measures or activities designed to protect those elements”.

12. The Commissioner has considered the wording of the request. Although he is not able to view the withheld information, he notes that it is on a measure (planning) likely to affect the elements of the environment (regulation 2(1)(c) of the EIR). For procedural reasons, he has therefore assessed this case under the EIR.
13. This decision notice therefore considers whether the Council was entitled to rely on the exception provided by regulation 12(4)(b) of the EIR.

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

14. Under regulation 12(4)(b) a public authority may refuse to disclose environmental information if the request for information is manifestly unreasonable. A request may be manifestly unreasonable because of the excessive burden caused by complying with it.
15. The Council has explained that complying with this request would impose on it an unjustifiable burden. The Commissioner will therefore consider whether complying with this request is likely to cause a burden to the Council that is disproportionate to the request’s value.

16. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 set out an upper limit for responding to requests for information under FOIA. The limit for local authorities is £450, calculated at £25 per hour. This creates an effective time limit of 18 hours work. Where the authority estimates that responding to a request will exceed this limit, it is not under a duty to respond to the request.
17. Although there is no equivalent limit within the EIR, the Commissioner considers that public authorities may use equivalent figures as an indication of what Parliament considers to be an unreasonable burden, when responding to EIR requests. However, the public authority must balance the estimated costs 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 involved in responding to a request, a public authority may take account of the time it would take 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. Furthermore, unlike FOIA, under the EIR public authorities are entitled to include the time taken to consider the application of exceptions when calculating the cost of compliance with an EIR request.
20. The complainant has provided the following background to his request:

“...in Feb 2021 Shropshire Council submitted a planning application to build a new road near to Shrewsbury. In this matter the council is both the developer and the Planning Authority and this creates the potential for a conflict of interest. The planning application attracted an unprecedented number of objections (4000 by mid 2021 and now closer to 5000).

In July 2021 Shropshire Council (as developer) submitted a response to the comments that had been received to date. This response made no reference to the number of objections or any attempt to summarise the level of concern about different issues raised...it is not possible to judge from this document whether all the issues raised have been listed and, if some have not been listed, how that decision was made.

The council later made some revisions to the plans in Sept 2021 and Feb 2023. However, these were largely in response to specific requests from statutory consultees.

My Information Request aimed to allow me to better understand how the council (as developer) had come to its decision to largely ignore the significant numbers of objections received. To this end I wanted to see the emails and any notes of meetings where the objections were discussed by the team promoting the road within the council (and its consultants).

The response of the council has first been to apparently misunderstand my request and then to say that this would be too much work. I think that the latter issue is unlikely to be the case - the number of people involved in the decision making is likely to be limited and the time period over which the objections were being considered is also limited. Simple digital searches allow emails for instance to be identified very quickly and there are unlikely to be more than one or two meetings to discuss the objections."

The interpretation of the request

21. In its internal review response, the Council explained to the complainant that it had interpreted the request as being for:

"...all the background documents, emails etc that were produced in the process of reviewing the consultee comments and deciding where action was needed, and then developing the responses and producing the various reports etc. that are now on the planning portal."

22. The Commissioner notes that the complainant has not disputed this interpretation. The Commissioner considers the Council's interpretation to be objective and reasonable, and it is in keeping with the complainant's comments that he wanted to see the information which underpinned the published reviews and reports.

The work involved in complying with the request

23. In a detailed submission to the Commissioner, the Council explained that the request was substantial in terms of the information that would need to be consulted to check for relevant information. It said the work involved identifying, locating, extracting, redacting and providing the information underpinning the five documents it had referred to in the internal review.
24. The Council provided the Commissioner with an overview of each strand of work and summarised what would be involved in locating and identifying all the emails, meeting notes and reports, created over many months, to determine which comments and objections needed a

response, and what that response should be. It provided a breakdown of the actual tasks likely to be involved in complying with the request. Due to their detail, the Commissioner has not reproduced its submissions here. However, he is satisfied that the Council has clearly demonstrated that compliance with this request would involve the review of several hundred records, across various business areas and locations, and that multiple staff would need to be consulted.

25. The Council estimated that the work involved in complying with the request would exceed 66.5 hours, at a total cost of £1,662.50.
26. The Commissioner is satisfied that the Council's estimate of the work involved in complying with the request is cogent and credible. On the basis of its estimate, compliance would exceed the 18 hour appropriate time limit as legislated for under FOIA, by a considerable margin. The Council could not be expected to absorb that amount of work without it having an impact on its other areas of work.

The value of the request

27. The Commissioner has considered the importance of the underlying issue to which the request relates, and the extent to which responding to the request would shed light on that issue. He notes the complainant's claim that there were around 5,000 objections to the planning application. The Commissioner has viewed the relevant planning portal page and at the time of writing it contains more than 6,600 documents. It is clearly a matter about which the Council holds a considerable amount of information.
28. The complainant says that he wants to understand which comments and objections the Council has taken account of, which it has not, and why. He says that this is not clear from the review outcome documents on the planning portal. In its submissions to the Commissioner, the Council acknowledged that disclosure would make it easier for the public to identify which comments and objections it did, or did not, feel needed a response. However, it also said that where no response to a particular comment had been provided, it should be assumed that the Council felt the matter was adequately covered in the documents it had submitted with the original planning application.
29. The Council said that the requested information would not provide a comprehensive picture of all of the matters that were being considered, when determining the planning application. Going forward, a report will be produced by the Local Planning Authority ('LPA') for the planning committee, which will provide the public with an opportunity to see how the LPA has assessed comments and objections against both the initial planning application material and the five subsequent response documents published by the Council (as planning applicant).

30. Any individual objector can review the response documents and decide whether they think the Council, as applicant, has covered their comments or objections, to their satisfaction. If they have concerns, they can make further representations on this to the LPA. The Council reiterated that it believed the issues raised by particular comments and objections would have been adequately covered in the information submitted with the planning application, and this was why they did not appear in the subsequent response documents. It said that, in those cases, the LPA is the arbiter of any difference in opinion. Ultimately, it is for the LPA to determine what is relevant, what is irrelevant, and to request any further information from consultees or from the applicant.
31. The Council also clarified that further consultee comments have only very recently been provided and that its review and response process remains ongoing. Therefore, compliance with this request would not give a complete picture of the responses that the Council will ultimately provide to the LPA.
32. Having considered the Council's explanation, it appears to the Commissioner that disclosing the requested information would not add significantly to the public's understanding of the Council's review of the objections to its planning application. This is because, where it has not addressed a particular comment or objection, it believes those points were already adequately covered by the supporting information it submitted with its planning application. All of the comments and objections are available for inspection, and the objectors themselves will have had the opportunity to determine whether or not their comments were properly addressed, and to raise this with the LPA, if they deem it necessary.
33. Furthermore, and although the Commissioner recognises that this would be a considerable task, it should be possible to compare the responses and objections against the five published documents, so as to identify particular comments and objections which had not been addressed. It should be borne in mind that the Council says that such comments or objections will only appear to have not been addressed because it feels they were adequately covered in its original planning application.
34. The Commissioner also recognises that the information as it stood at the time of the request would not give a full picture of the Council's treatment of the responses it has received, as further comments have been received since the request was made, and they therefore fall outside the request's scope.

Is the request 'manifestly unreasonable'?

35. In view of the costs of complying with the request, and the rather limited benefit that would flow from disclosure in this case, the Commissioner is satisfied that the Council has demonstrated that compliance with this request would impose an unreasonable burden upon it and therefore that the request is manifestly unreasonable.

Public interest test

36. Regulation 12(4)(b) is subject to the public interest test. This means that where an exception is engaged, a public authority may still only refuse a request if the public interest in maintaining the exception outweighs the public interest in disclosing the information.
37. The Commissioner recognises that there will always be a 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 in official decision-making.
38. The Commissioner has already considered many of the issues relevant to the public interest test (ie the request's proportionality and value) when deciding whether this exception was engaged. While the amount of information that would need to be consulted indicates that there is significant strength of feeling about the Council's planning application, he assessed that the benefit that would flow from the disclosure of the information that has actually been requested in this case, would be limited.
39. The comments and objections submitted by statutory bodies, key stakeholders and members of the public, are all available on the Council's planning portal for anyone to review and examine. The Council has also proactively made the five documents created in response to comments about its planning application, available on its website. These factors go some considerable way to addressing the public interest in disclosure.
40. The public interest in maintaining this exception lies in protecting public authorities from exposure to disproportionate burden. Dealing with a manifestly unreasonable request may strain a public authority's resources and get in the way of it delivering mainstream services or answering other requests.
41. In this case, the Council has shown that the work involved in responding to the request would be very expensive and time consuming. Public authorities have limited resources and there is a strong public interest in them being able to protect those resources in order to carry out their wider obligations fully and effectively.

The Commissioner's decision

42. Having considered the above matters, the Commissioner has placed considerable weight on the amount of information that is already in the public domain, and the fact that more will shortly be published. In light of this, he is satisfied that there is insufficient public interest in disclosure to justify the burdensome impact of compliance on the Council's resources. His decision is therefore that the public interest favours maintaining the exception. The Council was therefore entitled to rely on regulation 12(4)(b) of the EIR to refuse to comply with the request.

Regulation 12(2) - Presumption in favour of disclosure

43. Regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions. As stated in the Upper Tribunal decision *Vesco v Information Commissioner (SGIA/44/2019)*²:

"If application of the first two stages has not resulted in disclosure, a public authority should go on to consider the presumption in favour of disclosure..."

and

"... the presumption serves two purposes: (1) to provide the default position in the event that the interests are equally balanced and (2) to inform any decision that may be taken under the regulations" (paragraph 19).

44. As set out above, in this case the Commissioner's view is that the balance of the public interest favours the maintenance of the exception, rather than being equally balanced. This means that the Commissioner's decision, whilst informed by the presumption provided for in regulation 12(2), is that the exception provided by regulation 12(4)(b) was applied correctly.

Regulation 9 – Advice and assistance

45. Regulation 9(1) of the EIR says that a public authority shall provide advice and assistance, so far as it would be reasonable to expect it to do so, to applicants and prospective applicants. The First-tier Tribunal has also commented that public authorities have a duty to act in a

²https://assets.publishing.service.gov.uk/media/5d7a6a2340f0b61d01bba991/SGIA_44_2019.pdf

reasonable way when refusing a request under regulation 12(4)(b) of the EIR³.

46. Although it refused the request, the Council referred the complainant to the five documents on its planning portal which set out its responses to comments and objections. The Commissioner acknowledges that this was information which it could be assumed would be of interest to the complainant, even though it was not what he had requested.
47. However, the Council said in its response to the Commissioner's enquiries that it held further information which it believed would be of assistance to the complainant:

"The complainant refers specifically to the July 2021 Applicant Response, and they have previously advised that it is difficult to determine which consultees have been responded to. To assist them on this specific point we have identified the attached internal document which represents the outcome of a review of the comments & objections received by statutory bodies and key stakeholders. It sets out a series of responses to points raised by each statutory body or key stakeholder. These responses were used in the production of the July 2021 Applicant Response but without references [sic] any of the statutory bodies or key stakeholders."
48. Unfortunately, the Council did not provide the Commissioner with a copy of the internal document it referred to, but as it has indicated that it would be of assistance to the complainant, and it has not argued that it is excepted from disclosure, it must now take the action set out in paragraph 3, above.
49. Where a public authority is refusing a request under regulation 12(4)(b) as manifestly unreasonable because of burden or cost, the Commissioner normally expects it to provide the applicant with reasonable advice and assistance to help them submit a less burdensome request.
50. In this case, the Council explained in its internal review response that it was applying regulation 12(4)(b), but it did not address whether, or how, the scope of the request might be reduced. The Commissioner considers that it would have been reasonable for it to have done so. To rectify this, the Council must now take the action set out in paragraph 3, above.

³[https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1711/Bright,%20Timothy%20EA.2015.0107%20\(16.11.15\).pdf](https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1711/Bright,%20Timothy%20EA.2015.0107%20(16.11.15).pdf)

Right of appeal

51. 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

52. 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.

53. 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

Samantha Bracegirdle
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