

**Freedom of Information Act 2000 (FOIA) / Environmental
Information Regulations 2004 (EIR)**

Decision notice

Date: 11 September 2023

Public Authority: North Yorkshire County Council

Address: County Hall
Racecourse Lane
Northallerton
North Yorkshire DL7 8AL

Decision

1. The complainant requested information about planning applications for Heavy Goods Vehicle Operating Centres. North Yorkshire County Council (the "council") refused the request as manifestly unreasonable under the terms of regulation 12(4)(b).
2. The Commissioner's decision is that the council is entitled to rely on regulation 12(4)(b) of the EIR to refuse to comply with the request but that it breached regulation 11 by failing to conduct an internal review within 40 working days.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 20 March 2023 the complainant wrote to North Yorkshire County Council (the "council") and requested the following information:

"...all planning permissions for Operator centres applied for and also granted from March 2020 to March 2023."
5. The council responded on 21 April 2023 and disclosed some information.
6. On 29 April 2023 the complainant asked the council to review its handling of the request.
7. On 29 June 2023 the council issued its internal review response. This confirmed that the council was relying on regulation 12(4)(b) (manifestly unreasonable) to refuse the request on the grounds that complying with the request would impose a significant and disproportionate burden on the council's resources.

Scope of the complaint

8. On 23 June 2023 the complainant contacted the Commissioner to complain about the council's handling of their request.
9. The Commissioner has considered whether the council correctly relied on regulation 12(4)(b) to refuse the request.

Background

10. An Heavy Goods Vehicle (HGV) Operating Centre is a place where an HGV vehicle is normally kept when not in use.
11. Licences for Operating Centres are issued by the Traffic Commissioner. Guidance regarding the application of The Goods Vehicles (Licensing of Operators) Act 1995 in respect of licences states:

"Under section 7 it is an offence to use a place in any Traffic Area without authority from the traffic commissioner to use that site as an operating centre for heavy goods vehicles (Section 5(4)(b) does not preclude a traffic commissioner from taking action against an operator for any associated breaches). An operating centre is the base or centre at which a heavy goods vehicle is normally kept. The site must be

specified on the licence. Section 23(6) makes it an offence to contravene any condition attached to an operating centre.”¹

12. The complainant has a personal interest in the interaction between operating centres and local authority planning applications, specifically, in ascertaining the extent to which planning permission is needed for an Operating Centre.
13. A previous request by the complainant for information relating to these matters was the subject of a decision notice issued by the Commissioner in 2021². The Commissioner’s decision was that the public authority correctly relied on section 14(1) (vexatious requests) of the FOIA to refuse the request.
14. The decision notice was subsequently appealed to the First-Tier Tribunal (General Regulatory Chamber) Information Rights (EA/2021/0187). The Tribunal overturned the Commissioner’s decision on the grounds that it considered the purpose of the request was valid and that the burden on the council was not unreasonable. The Tribunal directed the council to issue a new response to the complainant.
15. The complainant’s request which is the subject of this decision notice seeks to establish whether planning applications have been submitted for Operating Centres and what decisions have been made by the council in respect of granting permission. In the context of the broader purpose of this, obtaining the information will assist the complainant in taking forward a dispute with the council over these matters.

Reasons for decision

Regulation 12(4)(b) – manifestly unreasonable

16. The Commissioner has considered whether the council is entitled to rely on regulation 12(4)(b) (manifestly unreasonable) of the EIR to refuse to provide the requested information.

¹ <https://www.gov.uk/government/publications/traffic-commissioners-operating-centres-stable-establishments-and-addresses-for-service-november-2018/statutory-document-4-operating-centres-stable-establishments-addresses-for-service>

² The request was made to Harrogate Council, which due to local government restructuring, became part of North Yorkshire Council during 2023. The decision notice is published here: <https://ico.org.uk/media/action-weve-taken/decision-notices/2021/2620060/ic-47894-15k4.pdf>

17. Regulation 12(4)(b) of the EIR provides that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable. In this case, the council is citing regulation 12(4)(b) on the grounds that to comply with it would impose a significant and disproportionate burden on the council's resources, in terms of time and cost.

18. In its internal review response the council explained how planning application information is recorded and clarified the limitations of filtering/searching for specific information:

"All planning applications received are logged in the back-office system and this information is then held in a database. Various information is held against each case, including information on the applicant, site location and the proposal. This information also displays against the case on Public Access, which is viewable externally to members of the public, along with files that are submitted with the planning application.

The description of the proposal is submitted by the applicant as part of the application form and only in certain circumstances will the Local Planning Authority amend the description of this proposal field. This means that this proposal field of the application may not always exactly capture what in effect they are seeking planning permission for."

19. In relation to responsibility for Operating Centre licenses, the council confirmed:

"...Operator Centre licenses are issued by the Traffic Commissioner and are separate to planning permission on a site. The council does not hold a list of operating centres that have been granted a license as this information is held by the Traffic Commissioner and can be accessed on their website here: Vehicle operator licences - GOV.UK (www.gov.uk) They may be included in planning application files and as part of the submission but this information may not be included in the proposal, due to it being at the discretion of the applicant."

20. The council further advised the complainant that it is possible to search the published list of operator licence holders on the Traffic Commissioner's website by area and then to search for planning application files for the associated locations on the planning portal in the Harrogate area.

21. During his investigation the Commissioner carried out a rudimentary search along these lines but, despite identifying a number of sites in Harrogate with licences, he could find no reference to Operating Centres in corresponding planning applications on the council's website.

22. The council subsequently clarified that

"....it is possible, even likely, that planning permission has not been obtained for the addresses searched. This is not an offence but may be a breach of planning control. This will be dependent upon the specific circumstances of each location."

23. In relation to this same point, the complainant confirmed that they carried out a search of the Traffic Commissioner's website and that this retrieved 73 licences that were granted within the area in their request. The Commissioner asked the council why it would be an unreasonable burden to carry out a search by address for associated planning applications which have Operating Centres as a reason for planning approval.

24. The council maintained that it does not index planning permissions against a specific use category, only against a specific location. It submitted that it is not required to hold the Traffic Commissioner's list of operator licences and that it is not required to obtain this list to comply with the request.

25. The council further explained that, even if it were to undertake to search the 73 sites identified, there would be likely to be multiple permissions/applications per site and it is estimated that this would take around 30 minutes per location to examine each application file.

26. The council confirmed that, if there is a planning condition on a location, it would also require officer time to check the decision notices and make a judgement about what information is on there. The council maintained that carrying out such searches would take the council beyond the reasonable expectation of 18 hours to comply.

27. In relation to its application of regulation 12(4)(b) the council's internal review stated:

"The council is unable to confirm if this information held as to do so would create an unreasonable cost and burden. This is because:

- There is no specific drop down within the system that allows applications for operator centres to be recorded. As a result, a wildcard search of the proposal field would need to be used but this may also not return all results as it is provided by the applicant so the only robust way would be to check all relevant applications received during the requested period. There is no way to search our Document Management System for a specific file type or file name as it is stored by case reference.

- In order to be robust, all relevant applications received within the period requested would need to be checked – this amounts to 4656 planning applications over the period of the request. If each application took 15 mins to review on average, then this would amount to 1164 hours of Officer time.
- Following an initial wildcard search, 69 applications were returned. These would likely take longer to review due to the nature of the applications and would take approximately 1 hour per case, amounting 69 hours of Officer time.”

28. The council went on to say:

“North Yorkshire Council has considered what guidance to provide you to narrow the scope of your request, however, as this request relates to a specific piece of information which may or may not be held within planning application records, the council is unable to offer further advice on how to narrow your request to bring it within the cost limit.”

29. Finally, the Commissioner asked the council whether it had conducted searches of planning officers’ email accounts for references to Operating Centres within the context of planning applications.
30. The council confirmed that no searches of planning officer email accounts were undertaken. It explained that this was not judged as reasonable considering the scope of the request.
31. The council explained that correspondence relevant for a planning application is kept within the IDOX document management system (since November 2021). It confirmed that it is not possible to undertake a word search of the document management system to find information contained within files. Documents, it explained, are stored against a case, with a document type and description therefore searches can be made by the document type or description. The council reiterated that planning applications are described using whatever wording the applicant deems necessary to complete their application form.

Conclusions

32. The Commissioner has spent some considerable time consulting with the complainant and the council to establish the relevant facts in this matter. He is sympathetic to the complainant’s position and understands why he would think that, given the potential need for planning conditions to be satisfied, the council would be able to readily retrieve the information in order to meet its own planning/enforcement duties.
33. However, having carefully considered all submissions, the Commissioner is satisfied that the council’s planning systems do not have the

functionality to readily search, retrieve and extract the specific requested information. He is also satisfied from the council's explanations that there is no contradiction between there potentially being a need for Operator Centres to satisfy planning conditions and there being no quick route to identifying planning applications which relate to Operator Centres. The council has confirmed that:

"The Council records planning permissions against a location only, not a use category. There is no statutory expectation to record planning applications in a way that need to be searched other than against the property permission that is being applied for".

34. The Commissioner is therefore satisfied with the council's explanation that going through the information in order to respond to this EIR request would impose an unreasonable burden upon it. His conclusion is, therefore, that the request is manifestly unreasonable and so the exception provided by regulation 12(4)(b) is engaged.
35. Regulation 12(4)(b) is subject to a balance of public interest test.

Public interest in disclosure

36. The council acknowledged 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, all of which ultimately contribute to a better environment.
37. The council also recognised that regulation 12(2) requires authorities to apply a presumption in favour of disclosure.
38. The complainant has pointed to the Tribunal decision (see paragraph 15) which acknowledged the validity of the purpose of their previous request for related information.

Public interest in maintaining the exception

39. The council has argued that responding to this request would have an impact on its ability to carry out its duties. The cost of providing a response in this case would be expensive and time-consuming drawing away resources that are very much in demand within the Planning service area.
40. The council has further argued that public authorities have limited resources and it is within the public interest that these resources are protected enabling them to carry out their wider obligations fully and effectively.

41. The council has advised the complainant that planning applications, where this information may be available, can be found on its website. The council has acknowledged that it will be time consuming to search for the specific information requested, however the information required by the complainant could be located within these files, which are publicly accessible.
42. The council confirmed that it considered whether there was any wider public interest in the requested information and any impact that disclosure may have in terms of the environment. In the council's opinion there is limited wider public interest in this information.

Balance of the public interest

43. The Commissioner acknowledges the general presumption in favour of disclosure provided by regulation 12(2) and considers that the general public interest in disclosure where information relates to potential environmental impact carries some weight.
44. Whilst the Commissioner is also mindful of the complainant's personal interest in the information and recognises that they have a genuine reason for accessing the information, the issue at hand here is whether disclosure of the information would be in the public interest, which may differ from the complainant's personal interest.
45. However, the Commissioner also recognises that these factors must be balanced against the impact that responding to the request would have on the public authority's ability to carry out its duties. The cost of providing a response in this case would be 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. This is not a comment on whether the request has a valid purpose but rather on whether, from a public interest perspective, satisfying the purpose of the request warrants imposing the level of burden on the council that has been identified.
46. In relation to this point, beyond the complainant's interest, it is not clear that there is any broader public interest in the information being disclosed. The council has confirmed that it does not need to readily access the requested information in order to meet its statutory obligations in respect of planning. The Commissioner recognises that the complainant does not accept this, however, he has no evidence that the council is being misleading or that it is otherwise conspiring to hide the truth about Operating Centres in the context of planning applications.

47. In addition, as advised by the council, it is open to the complainant to spend their own time marrying information retrieved from the Traffic Commissioner to publicly available planning applications on the council's website. Where the complainant has concerns about the council's decisions in relation to specific planning applications there are also other remedies for addressing this which do not require the disclosure of information under the EIR³.
48. In this case, having considered the above, 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.

Procedural matters

49. Regulation 9 of the EIR requires a public authority to provide advice and assistance to requesters. The Commissioner accepts that in providing the complainant with the means to access the information via their own efforts, the council has sufficiently met its obligations under regulation 9.
50. Under the requirements of regulation 11, a public authority is obliged to respond for a request for internal review within 40 working days. In failing to carry out an internal review within 40 working days in this case the council breached regulation 11 of the EIR.

³ These remedies could include seeking independent legal advice or submitting a complaint via the council's corporate complaints procedure.

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: 0300 1234504

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

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