

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

**Date:** 23 May 2024

**Public Authority:** Monmouthshire County Council  
**Address:** County Hall  
The Rhadyr  
Usk  
NP15 1GA

**Decision (including any steps ordered)**

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1. The complainant requested from Monmouthshire County Council (the Council) information relating to Old Monmouth Road. The Council refused the request and cited regulation 12(4)(b) (manifestly unreasonable) of the EIR.
2. The Commissioner's decision is that the Council was entitled to rely on regulation 12(4)(b) of the EIR to refuse to comply with the request, and the public interest lies in maintaining the exception. The Commissioner does not require the Council to take any further steps as a result of this decision.

**Request and response**

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3. On 21 November 2023 the complainant wrote to the Council and requested information in the following terms:

"OLD MONMOUTH ROAD AND OFF OLD MONMOUTH ROAD RAGLAN  
DATA REQUEST TIME PERIOD OF THE DATA REQUESTED: February 1  
2022 to November 21, 2023 inclusive

Please supply all data from the departments and sections (in order of preference) below on:

Old Monmouth Road, Raglan and off Old Monmouth Road RAGLAN: Highways CEO's office Legal Street naming and numbering Contact centre and the cost of supplying this request - step by step."

4. On 23 November 2023 the Council responded and handled the request under the EIR. It refused and cited regulation 12(4)(b) (manifestly unreasonable) due to the request being a repeated request. The Council also cited regulation 12(4)(c) (requests formulated in too general a manner) of the EIR. It stated that it would not be providing any further information regarding 'Street Naming and Numbering' and Old Monmouth Road, as it considered this information exempt under section 14(2) (repeat requests) of FOIA. The Council said this information is not considered environmental and is subject to FOI not EIR.
5. On the same day, the complainant asked for an internal review.
6. On 24 November 2023 the Council provided its review response and maintained its original position to refuse to comply with the request.

### **Reasons for decision**

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7. This reasoning covers why the Council was entitled to rely on regulation 12(4)(b) of the EIR to refuse to comply with the request.

### **Regulation 12(4)(b) – manifestly unreasonable**

8. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose environmental information to the extent that the request is manifestly unreasonable.
9. Under FOIA, the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') specify an upper limit for the amount of work required beyond which a public authority is not obliged to comply with a request. The limit for local authorities, such as the Council, is £450, calculated at £25 per hour. This applies a time limit of 18 hours.
10. The Fees Regulations state that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
  - determining whether the information is held;
  - locating the information, or a document containing it;
  - retrieving the information, or a document containing it;

- and extracting the information from a document containing it.
11. The EIR differ from FOIA in that under the EIR there is no upper cost limit set for the amount of work required by a public authority to respond to a request.
  12. While the Fees Regulations relate specifically to FOIA, the Commissioner considers that they provide a useful point of reference where the reason for citing regulation 12(4)(b) of the EIR is the time and costs that compliance with a request would expend as is the case here. However, the Fees Regulations are not the determining factor in assessing whether the exception applies.
  13. Regulation 12(4)(b) sets a robust test for a public authority to pass before it is no longer under a duty to respond. The test set by the EIR is that the request must be “manifestly” unreasonable, rather than simply being “unreasonable”. The Commissioner considers that the term “manifestly” means that there must be an obvious or clear quality to the identified unreasonableness. It should also be noted that public authorities may be required to accept a greater burden in providing environmental information than other information.
  14. The information in this case, relates to a specific residential street. The Council’s actions in this respect would have an effect on the environment. The Commissioner agrees the requested information is environmental and that the Council was correct to handle the request under the EIR.
  15. The Council cited regulation 12(4)(b) on the grounds that to comply with it, would impose a significant and disproportionate burden on its resources, in terms of time and cost.

### **The Council’s position**

16. The Council stated to the Commissioner there is considerable history with the complainant making this request, and that it dates back to pre 2020, when a similar request was made. The Council fulfilled the request. The Council said at that time there was a stage 2 complaint which covered most of the handling of this first request. However, the Council spent approximately 100 hours collating the information for it: “please provide ALL data on MCC file for the last five years, including all metadata, referring to: [number redacted] Old Monmouth Road.” The Council further explained that the response was challenged, and complaints were raised as the complainant believed the Council were not offering full disclosure, along with some queries around the format of the information sent. These were dealt with in the official complaint (stage 2) and during the handling of that request.

17. The Council said that each time a request is submitted, it is of an overlapping and similar nature. The first request was received in December 2020 and answered in full, a request was received in September 2022 which was refused, another in February 2023 and this current request of November 2023. The Council explained that it cited section 14(2) of FOIA "as the information requested had been provided within the stage 2 complaint and was a repeat of the request submitted in September 2022. Although there is an interval of 6 months between the requests, each one has been unsuccessful resulting in lengthy reviews and complaint procedures...". Therefore the Council refused to comply with this request and deemed it manifestly unreasonable.
18. The Council confirmed that there was no additional information available. It also said "the stage 2 complaint which covered the handling of this request is over 400 pages and has been disclosed to the ICO...".
19. The Council stated this current complaint is a duplicate of IC-202113-Z1S3 and another case in which the complainant asked for "ALL data MCC hold relating to the address Old Monmouth Road from [date] to [date]." The Council referred to the decision notice IC-202113-Z1S3<sup>1</sup> in which its handling of the requests was upheld by the Commissioner.
20. The Council referred to another request by the complainant which was a follow-on from a previous request. Although the requests were different, the Council considered they are all intrinsically linked, and that they gave a full picture of the history of requests asking for ALL data regarding the residential street.
21. The Council said it had made several attempts to co-operate with the complainant, and explained to them how the request was too large a task to reasonably complete. Specifically, the term "All data" which is too large in scope, even with the reduction in service areas. The complainant was informed in the stage 2 complaint, the Street Naming team did not have any further information (the street in question having been named over 20 years ago), and that additional queries would not be responded to. The complainant was referred again to the stage 2 complaint. Each time the request is made, the Council said it enters into a negotiation with the complainant of trying to get a manageable request.

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<sup>1</sup> <https://ico.org.uk/media/action-weve-taken/decision-notice/2023/4023805/ic-202113-z1s3.pdf>

22. However, the Council said that it finds its suggestions are not accepted, and the complainant's own interpretation is submitted which leads to further refusals under regulation 12(4)(b) of the EIR, as they remain unmanageable. The Council argued that "the requests become very drawn out, taking up additional officer time and resources which contribute as a whole to the application of the regulation."
23. The Council explained that in order "to produce a step-by-step account of recording how long it would take and the cost of compliance, would mean contacting every officer in each department asking them to check their records (emails and other saved files), collate for the FOI response, noting how long that took with their hourly rate, and collating into one response." The Council believes that this is not a reasonable use of Council officer time, and would likely exceed 18 hours. It gave an example of the type of records held for each of these departments:

"Highways: Road maintenance schedules, repairs, pothole reports and complaints, dead animal reports, highway adoption records,

Legal: records from court attendees, claimants, could contain social care records

Street Naming: we have already advised that SNN will not be included due to the Stage 2 complaint.

Contact Centre: resident addresses, missed bin collections, council tax queries, **all** customer queries, records held on our CRM which mention Old Monmouth Road,"

24. The Council said this list is not exhaustive but is representative of the breadth of information type held by those services.

### **The Commissioner's position**

25. The Commissioner acknowledges the breadth of this request, and the length of time it would take to search each officer's email accounts and saved files. This would clearly exceed the time limit of 18 hours, and the Commissioner accepts that this is not a reasonable use of Council officer's time. Specifically, when taking into account the extent of information held for each of the departments. Whilst there is not a cost limit applicable in this case, it is evident that to comply with this request would have significant cost implications. Given the limited wider value in providing all information referring to Old Monmouth Road, the Commissioner considers the request is manifestly unreasonable. It is likely to cause a disproportionate burden on the Council's resources in terms of time and cost, as well as an unjustified level of distress, disruption and irritation on the departments.

### **Public interest test**

26. 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.
27. 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.
28. The Council said that in the interests of fairness, arguments in favour of disclosure may be that the complainant (and their neighbours) would see the Council operations of their residential street. However, the Council argued that the request itself is solely related to the complainant's residential street/address, and is not of general public interest.
29. On balance, the Council considers that it is not "in the public interest to use Council officers' time and resources to dedicate to one task..." it therefore maintains its position to refuse the request which it strongly argues to be burdensome.

### **Conclusion**

30. Taking into consideration the significant burden that complying would place on the Council, the Commissioner's view is the balance of the public interests favours the maintenance of the exception. The commissioner's decision, whilst informed by the presumption provided for in regulation 12(2) is that regulation 12(4)(b) of the EIR was applied correctly.
31. In view of this conclusion, the Commissioner has not gone on to consider the other exceptions which the Council cited to this request.

## **Right of appeal**

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32. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

33. 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.
34. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Joanna Marshall**  
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