

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 22 July 2024

Public Authority: London Borough of Richmond upon Thames
Address: 44 York Street
Twickenham
TW1 3BZ

Decision (including any steps ordered)

1. The complainant has requested information regarding the Richmond plan and Habitats Regulations Assessment from the London Borough of Richmond Upon Thames (the Council).
2. The Commissioner's decision is that the Council was entitled to rely on regulation 12(4)(b) when refusing this request.
3. The Commissioner does not require further steps

Request and response

4. On 9 November 2023, the complainant wrote to the Council and requested information in the following terms:
 - "1. Any and all formal responses by Natural England to any version of the draft Richmond Local Plan and which finished its Regulation 19 public consultation in the summer of 2023 ("the new Richmond Plan")?
 2. Any and all formal responses by Natural England to any and all drafts of the Habitats Regulations Assessment of any and all of the draft versions of the new Richmond Plan?

3. Internal correspondence between officers of Richmond Council relating in any way to the new Richmond Plan and any of the Habitats Regulations Assessments ("HRAs") of that plan?
4. Correspondence between any officers and councillors of Richmond Council and the authors of the HRA of the new Richmond Plan relating in any way to the new Richmond Plan and any of the HRAs of that plan?"
5. The Council responded on 6 December 2023. It provided some of the requested information and advised that the remainder was being refused under regulation 12(4)(d).
6. Following an internal review the Council wrote to the complainant on 8 February 2024. It revised its position advising that the information was now being withheld under regulation 12(4)(b).

Scope of the case

7. The complainant contacted the Commissioner on 14 March 2024 to complain about the way their request for information had been handled.
8. The Commissioner considers the scope of his investigation is to consider whether the Council was entitled to rely on regulation 12(4)(b).

Reasons for decision

Is the requested information environmental?

9. Regulation 2(1) of the EIR defines environmental information as being information on:
 - (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
 - (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
 - (c) 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;

- (d) reports on the implementation of environmental legislation;
 - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
 - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);
10. A Habitats regulation assessment is a process which determines whether a plan or project proposal could significantly harm the designated features of a European site¹. The Commissioner believes that the requested information is likely to be information on measures affecting the environment. For procedural reasons, he has therefore assessed this case under the EIR.

Regulation 12(4)(b) – Manifestly unreasonable

11. 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.
12. 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 guidance on regulation 12(4)(b)².
13. 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

¹ [Habitats regulations assessments: protecting a European site - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

² [Manifestly unreasonable requests - Regulation 12\(4\)\(b\) \(Environmental Information Regulations\) | ICO](#)

local authorities, such as the Council, is £450, calculated at £25 per hour. This applies a time limit of 18 hours.

14. 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.
15. 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.
16. 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.
17. The Council cited 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.

The Council's position

18. The Council confirmed to the Commissioner that all information relating to the Richmond Local Plan is held electronically; this would either be in a specific SharePoint file or in the email accounts of officers working on the Habitats Regulation Assessments.
19. The Council confirmed that it had used the following key terms when conducting its searches: "Habitats Regulation Assessment", "Habitats", "HRA" and "HRAs".
20. Having conducted its search, the Council confirmed that there were 12,814 pages of information which would need to be retrieved, reviewed and redacted in order to comply with this request.
21. The Council advised the Commissioner that even if it was to spend only 15-30 seconds reviewing each page, this would still amount to an estimated 53-106 hours worth of work.

The Commissioner's position

22. The Commissioner acknowledges that complying with the request for information would require the Council to spend a large amount of time retrieving, reviewing and making appropriate redactions to any information within the scope of the request. Redactions are not specified as part of the approved activities under section 12 of FOIA, but are mentioned as a burdensome factor to consider under section 14 (vexatious requests). That offers a comparable means under which to assess a burdensome EIR request.
23. The Commissioner considers that the estimate provided by the Council is reasonable and that they have used appropriate search terms and locations to retrieve the requested information.
24. The Commissioner accepts that complying with the request would clearly far exceed the time limit of 18 hours, and the Commissioner accepts that this is not a reasonable use of Council officers' time. 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. Complying with the request would also likely cause a disproportionate burden on the Council's resources in terms of time and cost, as well as an unjustified level of disruption to the department.
25. The Commissioner will now go onto consider the public interest test.

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 acknowledges that disclosing the requested information will promote transparency and accountability of the Council and public awareness and understanding of the Habitats Regulations Assessment process.
29. The complainant also explained that the requested information would demonstrate whether Council officers have carried out their duties properly when concluding that no appropriate assessment was needed of Richmond Park, when it conducted the Habitats Regulations Screening Assessment.

30. The complainant informed the Commissioner that if the Council was to disclose the requested information it would allow members of the public to determine if the Council was aware of any errors, incomplete information or misrepresentations at the time of the Habitats Regulations Assessment.
31. The Council explained that complying with the request would not only affect the Council's ability to carry out its duties, but it would also affect the Council's duties during the Local Plan Examination in public.
32. The Council explained that it does already make core documents about Habitats Regulations Assessment available on its website, which supports in addressing the public interest in disclosure.
33. The Council added that members of the public had also been given opportunities to make representations and hold the Council to account and understand the Habitats Regulations Assessment decision making process.
34. The Council concluded that the public interest in disclosure was outweighed by the public interest in maintaining the exception in regulation 12(4)(b).

Conclusion

35. 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.

Right of appeal

36. 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

37. 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.
38. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Michael Lea
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