

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 5 August 2024

Public Authority: Pembrokeshire County Council
Address: County Hall
Haverfordwest
Pembrokeshire
SA61 1TP

Decision (including any steps ordered)

1. The complainant requested various information in respect of South Quay. Pembrokeshire County Council ('[the Council']') refused the request citing regulation 12(4)(b) of the EIR on the basis that it was vexatious. The Commissioner's decision is that the Council was entitled to rely on regulation 12(4)(b) to refuse the request. The Commissioner does not require any steps.

Request and response

2. On 14 January 2024, the complainant wrote to the Council and requested the following information in respect of South Quay:
 - "1/Please supply a detailed breakdown of the enabling works to phases 1* and 2*;
 - 2/ Please supply the current programme of work including start and completion dates for phases 1 and 2;
 - 3/ Please supply a detailed budget for the completion of construction works of phases 1 and 2;

- 4/ Please supply details of all contracts entered with [name redacted]; and
- 5/ Retain [name of property redacted] with façade sympathetic with the Conservation Area?
- * phases shown separately.”
3. The Council responded on 26 January 2024. It refused the request citing regulation 12(4)(b) of the EIR which provides an exception from the duty to comply with a request on the basis that it is manifestly unreasonable.
4. Following an internal review the Council wrote to the complainant on 9 February 2024. It upheld its original response.

Reasons for decision

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

5. Regulation 12(4)(b) of the EIR states that:
- “For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that—
- (b) the request for information is manifestly unreasonable;”
6. The Commissioner has issued public guidance¹ on the application of regulation 12(4)(b). This guidance contains the Commissioner’s definition of the regulation, which is taken to apply in circumstances where either the request is 1) vexatious, or 2) where the cost of compliance with the request would be too great. If engaged, the exception is subject to a public interest test.
7. In this case, the Council considers that circumstance 1) is applicable.
8. The Commissioner recognises that, on occasion, there can be no material difference between a request that is vexatious under section 14(1) of the Freedom of Information Act 2000 (‘the FOIA’) and request

¹ <https://ico.org.uk/for-organisations/eir-and-access-to-information/guide-to-the-environmental-information-regulations/refusing-a-request/#when-can-we-refuse-a-request-for-environmental-information-3>

that is manifestly unreasonable on vexatious grounds under the EIR. The Commissioner has therefore considered the extent to which the request could be considered vexatious.

9. The Commissioner has published guidance on vexatious requests². As confirmed in this guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. Sometimes, it will be obvious when requests are vexatious, but sometimes it may not. In such cases, it should be considered whether the request would be likely to cause a disproportionate or unjustified level of disruption, irritation or distress to the public authority. This negative impact must then be considered against the purpose and public value of the request. A public authority can also consider the context of the request and the history of its relationship with the requester when this is relevant.
10. While section 14(1) of the FOIA effectively removes the duty to comply with a request, regulation 12(4)(b) of the EIR only provides an exception. As such the EIR explicitly requires a public authority to apply a public interest test (in accordance with regulation 12(1)(b)) before deciding whether to maintain the exception. The Commissioner accepts that public interest factors, such as proportionality and the value of the request, will have already been considered by a public authority in deciding whether to engage the exception, and that a public authority is likely to be able to 'carry through' the relevant considerations into the public interest test. However, regulation 12(2) of the EIR specifically states that a public authority must apply a presumption in favour of disclosure. In effect, this means that the exception can only be maintained if the public interest in refusing the request outweighs the public interest in responding.

The Council's position

11. By way of context, the Council explained that the South Quay Development is part of the Council's regeneration programme and is an ambitious project to redevelop the historic and prominent South Quay. It has been planned in two phases.
12. The Council informed the Commissioner that this request is the latest in a series of requests and other correspondence from the complainant on this subject, dating back to 2013. When viewed in context, the Council

² <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-14-dealing-with-vexatious-requests/>

considers that the request represents a disproportionate burden on its resources and an unjustified level of disruption and distress.

Disproportionate burden

13. The Council provided a table summarising the volume and nature of requests from the complainant in the period since 2013. The table confirmed that there has been a total of 36 requests on the subject of South Quay, with six resulting in internal reviews.
14. The Council referred to the Commissioner's own guidance that the greater the number of requests, the more likely it is that the latest request is vexatious, due to the collective burden of dealing with the previous requests when combined with the burden imposed by the latest request.
15. The Council further stated that this is only part of the picture, with the pattern of requests also proving relevant. The Council informed the Commissioner that a number of the requests were received within days of each other or whilst previous requests were still ongoing.
16. The Council also informed the Commissioner that in addition to these requests, it has received a vast amount of correspondence on this subject to various officers or teams including the Chief Executive, Assistant Chief Executive, Head of Economic Development and Regeneration, the Regeneration Manager, the Planning Team, the External Funding Manager, Complaints Team, and the Audit, Risk and Counter Fraud Manager in a 'scattergun' approach and has now been asked to direct all correspondence through the Council's Executive Support Team. The Council added, that despite this, the complainant does not adhere to this request and continues to write to officers and teams in relation to this topic.
17. To demonstrate the scale of this correspondence, the Council's Regeneration Team maintained a log of correspondence received from the complainant in the period from 2020 to February 2023 (the time they were asked to direct all queries through Executive Support), and there were 36 separate contacts. Similarly, the Council's Executive Support Team have logged all correspondence received from the complainant from March 2022 to 6 November 2023, which gives a total of 99 separate contacts.

18. The Council has referred to the Upper Tribunal decision in Dransfield³, which stated:

“A requester who consistently submits multiple FOIA requests or associated correspondence within days of each other, or relentlessly bombards the public authority with e-mail traffic, is more likely to be found to have made a vexatious request.”

19. The Council also referred to the duration of the requests themselves which have been submitted over a long period dating back at least 10 years. It has stated that complying with the volume of information requested over these years has taken a significant amount of resource/officer time, at a time when resources are already stretched, and considers that even though this request may appear entirely reasonable when viewed in isolation, based on previous experience, it is likely that responding to this request would generate further correspondence.

Value/purpose of the request / Motive of the requester

20. Although having no bearing on the consideration of most requests, the Council has referred to the Commissioner’s guidance in relation to vexatious requests and acknowledged that a key question to consider is whether the purpose or value of the request justifies the distress and disruption which may arise as a result of compliance.
21. It has acknowledged that most requests will have some value and will therefore have a “reasonable foundation” and there will often be an overlap between the private interests of the requester and a wider public interest.
22. In this case, although the Council has acknowledged that the request has a value or serious purpose, it has argued that there are factors which reduce that value.
23. The Council informed the Commissioner that the complainant has concerns around the project due to the length of time it is taking and the costs incurred, and believes that public funds have not been spent appropriately.
24. The Council further informed the Commissioner that an independent review by its Audit Team had been undertaken to provide assurance that

³ <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

there are 'adequate processes in place for the development, and that these were compliant with the Council's generic policies and procedures.

25. The Council explained that this was instigated by a complaint from the complainant in December 2021 to the Public Services Ombudsman for Wales (PSOW). The PSOW informed the Council that they would not formally be investigating the complaint as the individual had not engaged or completed the Council's corporate complaints process, and advised that the complaint would sit more comfortably with Audit Wales.
26. In January 2022, Audit Wales contacted the Council to state that it had received correspondence from a member of the public regarding the development, and it was agreed that an independent review would take place by the Council's Audit Team. A copy of the final report was provided to Audit Wales.
27. The Council considers that the complainant's concerns have therefore been comprehensively investigated and that the value in disclosing the requested information is consequently diminished.
28. The Council also considers that the volume and tone of correspondence from the complainant indicates that their motive is to attack it, as opposed to a genuine attempt to obtain information.
29. It has provided a number of examples regarding the tone of the correspondence including:

"Thank you for reminding me of Section 10. Thus I believe that already compiled and printed or digitised material can be disclosed virtually immediately. Any unreasonable delay would then be termed 'suppression of information' or the unreasonable withholding of such."
30. And in relation to FOI requests originating from within the Local Authority:

"I think [name redacted] was wrong to forward questions taken from letters to him and initiate them as FoI requests.
31. I acknowledge that you may think that the guidance from the Information Commissioner says that requests can originate from anyone, but I think that is a mis-reading or mis-interpretation of what he/she meant and that what is meant by 'anyone' is 'anyone who is not a member of the Local Authority'."

Harassment or distress (of and to staff)

32. The Council also considers that the request is indicative of obsessive behaviour which can have the effect of harassing staff due to the

collective burden the volume of requests and other correspondence on this topic has placed on its staff.

The Commissioner's conclusion

33. The Commissioner accepts that when viewed in isolation, this request appears entirely reasonable. The Commissioner also acknowledges that the complainant has concerns regarding the South Quay development, resulting in extensive correspondence with the Council on this matter in the form of FOIA/EIR requests and other correspondence.
34. However, the Commissioner agrees with the Council that 36 requests on the subject of the development in the period from 2013 represents a significant burden on its resources. Additionally, when combined with the pattern of the requests outlined by the Council, often being submitted within days of one another or while a previous request remains ongoing, the Commissioner considers that this represents an even greater burden on the Council's resources. Given the volume and pattern of requests, the Commissioner also agrees with the Council, that compliance with this request would be likely to result in additional requests on this subject.
35. The Commissioner acknowledges that the vast amount of additional correspondence with other departments or individuals within the Council on this subject, has put a considerable additional strain on its resources. He also considers that this is reinforced when the log of contacts is taken into consideration, not just by the sheer volume of contacts outlined earlier in this notice, but by the fact it was felt necessary to keep a log in the first place.
36. The Commissioner also believes that the complainant's refusal to adhere to the Council's request that they direct all correspondence to its Executive Support Team, demonstrates a lack of understanding regarding the burden responding to their correspondence is having on the Council.
37. The Commissioner is also mindful that the PSOW refused to investigate a complaint about the South Quay Development from the complainant because they had not exhausted the Council's internal complaints process.
38. A subsequent complaint to Audit Wales from an individual resulted in an internal Audit by the Council's Audit Team being instigated to check that the Council was following correct processes and procedures in respect of the development, and a copy of the subsequent report was sent to Audit Wales. The Commissioner therefore agrees with the Council, that the complainant's concerns have been comprehensively investigated.

39. The Commissioner would also point out that forwarding a request for information to the public authority's FOIA team for it to deal with, is a legitimate and common practice within public authorities.
40. Whilst the Commissioner accepts that there is a limited purpose and value to the request, he does not believe that this outweighs the cumulative burden of dealing with the volume of FOIA requests and other correspondence on the subject of the South Quay Development, and has concluded that the request represents a disproportionate or unjustified level of disruption on the Council's resources.
41. The Commissioner is therefore satisfied that the exception at regulation 12(4)(b) is engaged and has gone on to consider the public interest test.

Public interest test

42. The Council has acknowledged that there will often be an overlap between the private interests of the requester and a wider public interest. However, it considers that the private interests of the requester will carry little weight if they do not coincide with a wider public interest.

Factors in favour of disclosure

43. The Council has acknowledged the general presumption in favour of disclosure specified under regulation 12(2) of the EIR when considering exceptions and has confirmed that it was taken in consideration when assessing the public interest test in this case.
44. The Council recognises that there is a public interest in the South Quay Development and that it has a responsibility to promote transparency and accountability. On this basis, it has informed the Commissioner that periodic updates are presented to Cabinet and this information is then publicly available.

Factors in favour of maintaining the exception

45. The Council considers that there is a public interest in it being able to deliver its mainstream services and has argued that the requests and other correspondence it has received from the complainant over a sustained period of time, has placed a disproportionate burden on its resources, detracting from its ability to deliver these services.
46. The Council also considers that given the complainant's previous pattern of requests, that complying with this request will not satisfy them, and is likely to generate further requests, continuing to put pressure on its limited resources and its ability to carry out its mainstream services.

47. The Council also considers that the public interest is diminished when the updates to Cabinet which are made publicly available are taken into account.
48. The Council has argued that whilst the complainant may be interested in the information, their motives appear founded on their private concerns about the project that public funds have not been spent appropriately. However, the investigation of the Council's Audit Team did not support this view.

The balance of the public interest test

49. The Commissioner has considered the Council's public interest test, and acknowledges that it has taken the presumption in favour of disclosure under regulation 12(2) of the EIR into consideration.
50. The Commissioner also considers that the Council was correct to identify the general presumption in favour of transparency and accountability into account, in addition to the more specific interest in transparency and accountability in relation to the South Quay Development.
51. However, the Commissioner considers that there is a strong public interest in the Council being able to deliver its mainstream services, and is mindful that the burden of complying with the volume of FOIA/EIR requests on the subject of the South Quay Development, especially when combined with the volume of correspondence to other departments or individuals within the Council, is compromising its ability to do so.
52. The Commissioner also agrees that the public interest is diminished when the updates to Cabinet which are made publicly available are taken into account. He also considers that the public interest is diminished further by the audit of the Council's Audit Team and subsequent report forwarded to Audit Wales.
53. The Commissioner has therefore concluded that in all the circumstances of this case, the balance of the public interest test is strongly weighted in favour of maintaining the exception.
54. As covered above, the Commissioner has concluded that the public interest in maintaining the exception at regulation 12(4)(d) outweighs the public interest in disclosure of the information. 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)(d) was applied correctly.

Right of appeal

55. 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

56. 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.
57. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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