

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

Decision notice

Date: 23 March 2016

Public Authority: East Devon District Council
Address: Council Offices
Knowle
Sidmouth
Devon
EX10 8HL

Decision (including any steps ordered)

1. The complainant has requested information regarding gas and electricity consumption at 'The Knowle'. The Commissioner's decision is that East Devon District Council has correctly applied the exception for manifestly unreasonable requests at Regulation 12(4)(b) of the EIR. The Commissioner has also found that East Devon District Council has not breached the provision to provide advice and assistance at Regulation 9(1) or the requirements in relation to the refusal to disclose information at Regulation 14(3). He does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

2. On 23 September 2015, the complainant made the following requests for information via the WhatDoTheyKnow website¹²:

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https://www.whatdotheyknow.com/request/gas_consumption_at_the_knowle#incoming-734172:

"The gas consumption at the Knowle for:

the financial years 2007/08, 2008/09, 2009/10, 2010/11, 2011/12, 2012/13, 2013/14 and 2014/15;

including the amount of kWh and the expenditure on gas for these periods;

and including the standing charges and the climate change levy.

I would be grateful if you could provide me with the exact documentation which shows these figures. Thank you."

"I would be grateful if you could confirm the following:

The electricity consumption at the Knowle for:

the financial year 2007/08 was 755,671 kWh resulting in an expenditure on electricity of nearly £50,000, excluding standing charges and the climate change levy.

the financial year 2008/09 was 797,923 kWh resulting in an expenditure on electricity of £67,000, excluding standing charges and the climate change levy.

I would be grateful if you could provide me with the exact documentation which shows these figures. I would also like to know what were the standing charges and the climate change levy for these periods. Thank you.

I would also like you to provide me with the following:

The electricity consumption at the Knowle for:

the financial years 2009/10, 2010/11, 2011/12, 2012/13, 2013/14 and 2014/15;

including the amount of kWh and the expenditure on electricity for these periods;

and including the standing charges and the climate change levy.

I would be grateful if you could provide me with the exact documentation which shows these figures. Thank you."

3. On 24 September 2015, the complainant added the following notes to the WhatDoTheyKnow threads:

"I would like you to provide me with all of the documentation I have requested in their original electronic versions and not in their scanned versions."

"As a further note to my FOI Request, I would like to make it clear that my Request for you to 'provide me with the exact documentation' should include:

copies of the gas/electricity invoices.

Again, these should be in their original electronic versions and not in their scanned versions."

4. The council responded on 19 October 2015. It said that information prior to 2008 is not held and provided three excel spreadsheets detailing the requested information for 2008 – 2013. It explained that, for the more recent period, the level of detail requested has not been produced and it only has summary information available which it provided. In relation to copies of the actual bills, the council provided the exception for manifestly unreasonable requests at regulation 12(4)(b) of the EIR.
5. On 25 October 2015, the complainant expressed dissatisfaction with the responses. He asked the council to confirm that it keeps paper/digital copies of all gas/electricity invoices, and repeated the requests to be provided with copies unless an exemption applies.
6. The council responded on 17 November 2015 to the WhatDoTheyKnow thread relating to gas consumption. It confirmed that 6 years' worth of paper invoices are held and said that some of the more recent invoices are also held electronically. It summarised that it has provided all of the information contained within the bills and that it considers the requests to be provided with copies of actual bills to be manifestly unreasonable.
7. On 8 December 2015, the complainant requested an internal review on the WhatDoTheyKnow thread relating to electricity consumption. The council responded on 13 January 2016. It referred the complainant to the comments made in its internal review response of the parallel request for gas consumption dated 17 November 2015 and confirmed that this stands as the council's final response in this matter.

Scope of the case

8. The complainant contacted the Commissioner on 26 November 2015 to complain about the way his requests for information had been handled.
9. During the Commissioner's investigation, the council explained that, in the spirit of compromise, it downloaded actual bills from 2013 to date from its suppliers' website and provided them to the complainant. It said that it would not be practical to do this for the five year period before 2013 as it has changed suppliers a number of times and the council would be charged for this copy information, if indeed it has been retained.
10. The Commissioner understands that the complainant has expressed to the council that he cannot accept that obtaining bills prior to 2013 from suppliers would not be practical and that any fees for obtaining such information are normally minimal.
11. The Commissioner would like to draw attention to the fact the EIR does not require a public authority to obtain copies of information from third parties in order to respond to a request for information and therefore the council is under no obligation in this case to obtain copies of bills from its current or previous suppliers.
12. The Commissioner wrote to the council separately in relation to the two requests and subsequent complaints. As the council stated that it was providing the same response in relation to the two complaints, the Commissioner has deemed it appropriate to consider both in this decision notice.
13. The Commissioner has considered the council's application of Regulation 12(4)(b).
14. He has also considered whether the council has breached the obligation under Regulation 9 to provide advice and assistance and the requirements of Regulation 14(3) in relation to the refusal of the request.

Reasons for decision

Regulation 12(4)(b) – manifestly unreasonable

15. 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.

16. In this case, the council cited this exception on the ground that the cost of dealing with the request is too great.
17. The EIR differ from the FOIA in that no specific limit is set on the amount of work required by an authority to respond to a request as provided by section 12 of the FOIA. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the fees regulations) which apply in relation to section 12 of the FOIA are not directly relevant to the EIR - the cost limit and hourly rate set by the fees regulations do not apply in relation to environmental information. However, the Commissioner accepts that the fees regulations provide a useful starting point where the reason for citing regulation 12(4)(b) is the time and cost of a request but they are not a determining factor in assessing whether the exception applies.
18. The Commissioner is satisfied that Regulation 12(4)(b) sets a fairly robust test for an authority to pass before it is no longer under a duty to respond. The test set by the EIR is that the request is 'manifestly' unreasonable, rather than simply being 'unreasonable' per se. The Commissioner considers that the term 'manifestly' means that there must be an obvious or clear quality to the identified unreasonableness.
19. It should also be noted that public authorities may be required to accept a greater burden in providing environmental information than other information. This was confirmed by the Information Tribunal in the DBERR case³ where the tribunal considered the relevance of regulation 7(1) and commented as follows (paragraph 39):

"We surmise from this that Parliament intended to treat environmental information differently and to require its disclosure in circumstances where information may not have to be disclosed under FOIA. This is evident also in the fact that the EIR contains an express presumption in favour of disclosure, which FOIA does not. It may be that the public policy imperative underpinning the EIR is regarded as justifying a greater deployment of resources. We note that recital 9 of the Directive calls for disclosure of environmental information to be "to the widest extent possible". Whatever the reasons may be, the effect is that public authorities may be required to accept a greater burden in providing environmental information than other information."

³ Department for Business Enterprise and Regulatory reform v The Information Commissioner and Platform. Appeal no. EA/2008/0097

20. Therefore, in assessing whether the cost or burden of dealing with a request is clearly or obviously unreasonable, the Commissioner may take the following factors into account:

- Proportionality of the burden on the public authority's workload, taking into consideration the size of the public authority and the resources available to it, including the extent to which the public authority would be distracted from delivering other services.
- The nature of the request and any wider value in the requested information being made publicly available.
- The importance of any underlying issue to which the request relates, and the extent to which responding to the request would illuminate that issue.
- The context in which the request is made, which may include the burden of responding to other requests on the same subject from the same requester.
- The presumption in favour of disclosure under regulation 12(2).
- The requirement to interpret the exceptions restrictively.

21. The council explained that there are two payment methods for utility bills as follows:

"1. Payments made by Direct Debit and a copy invoice sent to the council. Direct Debit invoices are filed in batches containing 6 weeks worth of invoices. Each file includes all invoices received during that period and would need to be searched separately for invoices relating to gas and then specifically for supplies to the Knowle. We also receive energy invoices for several other sites and property within the Council's ownership.

2. If the payment was made by invoice (usually prior to Direct Debits being set up), a batch number would be filed for the transaction and this will relate to the physical file stored in our basement archive. Each of a number of boxed files would need to be searched manually for the corresponding invoices and these invoices then copied and replaced correctly. It is worth also pointing out that suppliers changed a number of times during the last 6 years and so the "look" of the invoices is not always the same so the files would need to be searched very carefully to ensure that all relevant documents are found. As stated, we are billed for the Knowle office site but also for numerous other council-owned sites."

22. It then explained that for the period in question, there would be approximately 161 direct debit invoices and 42 actual invoices and that finding these, in amongst the many hundreds of other invoices, would take a significant amount of time. It said that it has searched one six week direct debit file and located one gas invoice relevant to the request and the search took approximately 30 minutes. It explained that for the six year period requested there are around 48 files and therefore it estimates that the work involved in retrieving the gas bills will take around 24 hours.
23. In relation to the electricity bills it said that it would not necessarily double the time involved, but would add significantly to the search time. It explained that for electricity bills, it receives bulk bills for different types of buildings and the search would entail finding the specific costs relating to the Knowle.
24. The council said it would then need to reconcile each of the invoices with the amounts entered onto its payment system to ensure that all relevant information had been located. It has not estimated the further time needed for this but it said it would run into many hours of cross-checking.
25. In relation to the complainants comment that the gas and electricity invoices will be archived either in a folder marked 'gas/electricity invoices' and/or in a computer file similarly marked, as is the norm for any household or business, the council said that the complainant is comparing the council's file-keeping with that of an average domestic household. It said that it has tried to explain to him that his belief that all of this information is kept in one file marked "gas/electricity invoices" is, in reality, not the case. It explained that it receives invoices for numerous different sites including Housing stock, community centres, depots, public toilets and other public facilities.
26. In relation to the organisation of the council's records, the Commissioner would like to draw attention to the fact that consideration of the burden of dealing with these requests is concerned with how the information is actually held by a public authority, not how a complainant believes it should be held.
27. As noted above, in its initial response, the council provided three excel spreadsheets detailing the requested information for 2008 – 2013. In its response to the Commissioner, the council said that energy bills generally contain the date of supply, supplied address, meter readings, Kwh of energy used, and cost. It confirmed that all such information was provided to the complainant. The Commissioner notes that the information provided also included details of standing charges and the climate change levy. It explained that from 2013 it stopped preparing

this detailed analysis as it was becoming extremely time-consuming and was felt to be of limited value and that in its initial response summary information was therefore provided for this period. The Commissioner notes that such summary information included the meter readings, consumption and provider details.

28. The council confirmed that it only retains invoices for 6 years and therefore at the time of the request, invoices for 2007-2008 would no longer be held. The complainant has said complainant believes that the council is able to provide information about electricity and gas consumption from 2006 because in its reply of 1 September 2015 to a separate request of 10 August 2015 the council provided the 'Energy Knowle Bulk Bill elec gas' for the period July 2006 to August 2015⁴. He also believes that because in his request he quoted from 'Draft Agenda Item 19' for the 'Executive Board' (today known as the Cabinet) meeting of 6 May 2009 which in turn refers to 'Electricity consumption at the Knowle' and 'Over the two financial years from 2007/08 to 2008/09...' that full details for those years must exist.
29. The Commissioner has no reason to doubt that the council only retains invoices for 6 years. He considers that the council's explanation that until 2013 it produced a detailed analysis of energy consumption explains why information dating back to 2006 could be produced and it doesn't therefore follow that the council holds actual invoices over 6 years old.
30. In relation to the burden imposed by this request, the Commissioner is not convinced that the council would need to reconcile each of the invoices with the amounts entered onto its payment system to ensure that all relevant information had been located. However, he has no reason to doubt that the work involved in retrieving the gas bills will take around 24 hours and notes that the search for electricity bills would increase this time. The Commissioner accepts that this would be a significant burden.
31. In relation to the value of the request, the Commissioner notes that the information requested was provided for the period of 2008 – 2013, albeit in a different format. Information relating to the 'amount' of energy was provided in response to an earlier request (as noted in

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https://www.whatdotheyknow.com/request/heating_and_fuel_bills_for_know
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paragraph 28) and summary information was provided from 2013 (as noted in paragraph 27). He believes that the provision of such information in response to the requests greatly reduces the value in the requested information being made publicly available in the specific format of the actual bills or invoices. He also considers that the provision of actual bills from 2013 to date further reduces the value of the providing the requested information. The Commissioner can appreciate that there is value in understanding how much energy is being used at council offices but, given the information that has been provided, he does not consider that providing the information in the exact format requested would illuminate that issue.

32. The Commissioner has taken into account the presumption in favour of disclosure and the requirement to interpret the exceptions restrictively and accepts that when an exception from the EIR is cited, the arguments in favour of the citing of that exception must be sufficiently compelling to outweigh these factors. However, in the particular circumstances of this case, the Commissioner has found that the time and cost of dealing with the request would impose a disproportionate burden upon the council when weighed against the value of the requested information being made public in the specific format requested. He therefore considers that the exception is engaged and has gone on to consider the public interest test inherent in this exception.

Public interest test

33. All exceptions in the EIR are subject to the public interest test. Therefore, in deciding whether the information should be withheld the Commissioner has had to balance the public interest in maintaining the exception against the public interest in disclosure.
34. In relation to the public interest in disclosure, the council said that in light of its current re-location project it understands that energy usage is a key issue and that it is of interest to the public. It explained that it has no reason to withhold information about energy usage which is why it has already provided detail about this to the complainant.
35. The Commissioner has taken into account the general public interest in transparency and accountability. He is also mindful of the presumption in favour of disclosure and the need to read exceptions restrictively. He has also taken into account the burden and distraction that would be imposed on the council and the wider public interest in protecting the integrity of the EIR and ensuring that they are used responsibly.
36. On balance the Commissioner finds that the public interest favours maintaining the exception as the burden imposed on the council would be significant and, due to the provision of the majority of the

information requested, any wider value in the request is reduced. The Commissioner's view is that the complainant's request would not fulfil any wider environmental issue.

37. Therefore, in all the circumstances of the case the Commissioner finds that the public interest in maintaining the exception in regulation 12(4)(b) outweighs the public interest in disclosure.

Regulation 9(1) – advice and assistance

38. Regulation 9(1) of the EIR states:

“A public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.”

39. This regulation places a duty on a public authority to provide advice and assistance to someone making a request and the Commissioner believes that this includes assisting an applicant to refine a request if it is deemed that answering a request would incur an unreasonable cost.
40. The complainant has said that the council failed to help him reframe the question so that it can be answered.
41. As the council provided the majority of the requested information in its response, the Commissioner finds the council has not failed to comply with regulation 9(1) of the EIR.

Regulation 14(3)

42. Regulation 14(3) provides that where a public authority applies an exception under regulation 12, the refusal shall specify the reasons not to disclose the requested information including the exception relied upon and the matters considered under the public interest test.
43. The complainant has said that council has failed to state the exemption they are applying. He said that it appears to be applying an exemption on the grounds of costs but it has failed to show exactly how this applies.
44. As the councils response to these requests cited the exception at regulation 12(4)(b) and referred to its consideration of the public interest test, the Commissioner finds that the council has not breached regulation 14(3).

Right of appeal

45. 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@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

46. 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.
47. 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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