

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

Decision notice

Date: 7 July 2023

Public Authority: North West Leicestershire District Council
Address: Whitwick Road
Coalville
Leicestershire
LE67 3FJ

Decision (including any steps ordered)

1. The complainant has requested information held by North West Leicestershire District Council (the "Council") in relation to the addition of land identified as 'EMP90' to the 'East Midlands Freeport Project' and subsequent "Tax site".
2. The Commissioner's decision is that the Council has not demonstrated that this request is manifestly unreasonable and is not entitled to rely on regulation 12(4)(b) of the EIR to refuse to comply with the request.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation:
 - Disclose the withheld information.
4. The Council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

Request and response

5. The Commissioner understands that the complainant made an earlier similar request to the Council which was refused under regulation 12(4)(b) on the grounds that it was manifestly unreasonable.

6. On 26 April 2022 and 28 April 2022 the complainant made two revised requests for information:

Request 1

"Noting the EMP90 land was not included in the original list of successful Freeport Bids (see plan on link attached) please provide all and any recorded information in NWLDC's custody power or control in anyway relating to the addition of the EMP90 land into the East Midlands Freeport Project and all and any such information relating to any application for planning consent likely to be required as a result thereof."

Request 2

"Land South of the A453 (identified as "EMP90" in your 2021 SHELAA) "please provide all and any recorded information in NWLDC's custody power or control anyway relating to the addition of the land above into the East Midlands Freeport Project and its subsequent designation a "Tax Site" together with any recorded information relating to any potential application for planning consent likely to be required as a result of such addition."

7. The Council responded on 13 May 2022. It cited regulation 12(4)(b) of the EIR, again stating that the requests were manifestly unreasonable. It explained that this was because the cost of compliance would be too great. The Council suggested that the complainant narrow his request because further requests with "broad search terms" would be likely to present the same problems.
8. The complainant requested an internal review on 1 July 2022. He clarified that he was only seeking information relating to the addition of the land described as EMP90 to the Freeport, rather than information relating to the Freeport more generally. He also clarified that his request related to the time period February 2021 to February 2022.
9. The Council responded on 28 July 2022 and upheld its original decision to refuse the requests under regulation 12(4)(b) of the EIR. The Council also advised that it would treat the complainant's clarification as a fresh request and would respond accordingly.
10. The Commissioner understands that the complainant continued to correspond with the Council, and that in September 2022 the Council did provide some information that fell within the scope of the request. However the complainant remained dissatisfied and pursued his complaint to the Commissioner.

11. The Council also directed the complainant to Leicester County Council as the responsible body for the Freeport site, which it said is the most likely party to hold the information the complainant is seeking.

Scope of the case

12. The complainant contacted the Commissioner on 23 August 2022 to complain about the way his requests for information dated 26 April 2022 and 28 April 2022 had been handled. The complainant disputed that these requests were manifestly unreasonable and argued that the Council ought to have provided him with the requested information
13. The Commissioner has therefore considered whether the Council is entitled to rely on regulation 12(4)(b) of the EIR in respect of the requests of 26 April 2022 and 28 April 2022, as clarified in the complainant's request for internal review.

Reasons for decision

Regulation 12(4)(b): manifestly unreasonable requests

14. The purpose of the exception at regulation 12(4)(b) is to protect public authorities from a manifestly, unjustified, inappropriate, or improper use of the EIR. The key question is therefore whether the request is likely to cause a disproportionate cost or burden, or an unjustified level of distress, disruption, or irritation. In considering this case the Commissioner has had regard to his published guidance on regulation 12(4)(b).¹
15. The Council has cited regulation 12(4)(b) on the grounds that to comply with the request would impose a significant and disproportionate burden on the Council's resources, in terms of time and cost.

The Council's position

16. In this case, the Council is citing regulation 12(4)(b) on the grounds that to comply with the requests would impose a significant and disproportionate burden on the Council's resources, in terms of time and cost. As is his usual practice the Commissioner asked that the Council

¹ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/manifestly-unreasonable-requests-regulation-12-4-b-environmental-information-regulations/>

provide a detailed estimate of the time and/or cost taken to provide the information falling within the scope of the complainant's requests.

17. The Council pointed out to the complainant and to the Commissioner that it had previously advised the complainant that a similar request had been too broad in scope (see paragraph 5 above). It had therefore asked the complainant to narrow his request to specific documents that were clearly defined. The Council set out that the requests of 26 April 2022 and 28 April 2022 were still too broad and would generate a "significant volume of information".
18. The Council explained that on receipt of the requests of 26 April 2022 and 28 April 2022, it conducted a number of searches of its records to identify information that may fall within the scope of the requests. The Council clarified that the site identified by the complainant was referred to by various titles, so it was necessary to search using each title as a search term. The search terms included "Land South of the A453", "EMP90", the "EMAGIC site" and "Land at Diseworth".
19. The Council confirmed that each of these searches returned hundreds of results, some of which would be duplicates that would need to be removed. It advised that it would then need to go through these results in order to establish if the information would wholly or partly be exempt from disclosure. As result this would take council officers away from their day to day jobs for a significant period of time which would result in a significant impact on their delivery of public services.
20. The Commissioner asked the Council why it had not refined the search term to only "EMP90" as referred to in the request, rather than all the names the site is referred to. He also asked the Council if it had used other search terms such as 'East Midlands Freeport Project', as this seemed to be more specific and was also included in the request.
21. In response the Council advised that narrowing the search term to 'EMP90' would artificially narrow the request as it understood that the request was about the land itself rather than how it was identified. It also said that it would not be appropriate to use the search term 'East Midlands Freeport Project' as it is rarely referred to by this name. It would be more likely that, internally, the project would be referred to as 'the Freeport' which, if searched, would return an equally high number of results if not more.
22. The Commissioner again asked the Council for details of any calculations provided in the context of the work that would need to be undertaken (e.g. searching X number of records would take Y minutes). Unfortunately the Council did not offer any further explanation or breakdown.

The complainant's position

23. The complainant did not explicitly argue that his request was not manifestly unreasonable. However, in his request for internal review on 1 July 2022, he clarified that he was only seeking information relating to the addition of the land described as EMP90 to the Freeport, rather than information relating to the Freeport more generally. He also clarified that his request related to the time period February 2021-February 2022.

The Commissioner's findings

24. The Commissioner notes that the requests of 26 April 2022 and 28 April 2022 are for information about land which has been referred to by several different names. The Commissioner therefore accepts that the Council would need to conduct more than one search for relevant information, and that there is the potential to return a lot of results. He also recognises that the Council asked the complainant to narrow the scope of his requests to specific documents. However, in the complainant's request for internal review the complainant did clarify his request, including the time period. The Council does not appear to have taken account of this clarification when conducting the internal review.
25. In the absence of any information to support the Council's position regarding the cost of compliance, the Commissioner is unable to accept the Council's argument in this regard. He has therefore gone on to consider the Council's arguments regarding the time and work required to comply with the requests.
26. In this case the Council has provided the Commissioner with an outline of the activities required, ie the searches that would need to be undertaken. It has not however explained how these searches have been deemed to be the most efficient way of dealing with the request. Nor has it provided any estimate or other evidence as to how much time would be required to conduct these searches.
27. The Commissioner regards the lack of detail from the Council about the work that would need to be undertaken to satisfy this request, and the cost implications of this, a key consideration in this instance. The Commissioner can only make a decision based on the information that is available to him. For this reason he asks public authorities to provide as much detail as possible as to how they are satisfied that they have complied with the requirements of the EIR, to inform his decision making. Where a public authority fails to provide sufficient information, or does not make a robust case, it is difficult for the Commissioner to be satisfied that the public authority has acted correctly.

28. Having considered the available information, it is the Commissioner's view that the Council has failed to demonstrate that the request is manifestly unreasonable, and therefore, his decision is that the exception provided by regulation 12(4)(b) of the EIR is not engaged. Consequently the Commissioner is not required to consider the public interest in maintaining the exception.

Procedural requirements

Regulation 9: advice and assistance

29. Under regulation 9 a public authority is required to provide a person making a request with advice and assistance so far as it would be reasonable to expect the authority to do so.²
30. Where a public authority refuses a request under regulation 12(4)(b) on the basis that it is too burdensome, the Commissioner is of the opinion that it would be reasonable for that public authority to provide the applicant with advice and assistance aimed at enabling them to formulate a refined request which could no longer be considered manifestly unreasonable.
31. In its refusal notice the Council reminded the complainant that it had previously advised him to narrow his request to "specific documents on this topic that are known to exist". The Commissioner does not consider this to be of practical assistance to the complainant. In the Commissioner's opinion a public authority should not assume that a requester knows what recorded information exists, unless for example the authority has already provided or published a list of what it holds on a particular topic. Accordingly the Commissioner finds that the Council failed to provide appropriate advice and assistance to the complainant in this case.
32. Nonetheless the Commissioner would also point out that requests for "any and all information" on a particular topic or issue are more likely to be refused on the grounds of burden. Notwithstanding the decision he has reached in this case, the Commissioner would recommend that requesters consider engaging with the public authority before submitting a wide-ranging request, in order to explore how a request may be worded most effectively.
33. The Commissioner notes that the complainant in this case continued to correspond with the Council after receiving the internal review regarding his requests of 26 April 2022 and 28 April 2022. The Commissioner

² <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/regulation-9-advice-and-assistance/>

further understands that the Council has provided some information to the complainant. In light of this continued correspondence the Commissioner has not set out any remedial steps in respect of regulation 9.

34. However, the Commissioner remains of the view that the Council ought to have provided more meaningful advice and assistance to help identify the specific information the complainant wished to receive. He expects the Council to consider more carefully the advice and assistance it provides to requesters in future cases.

Other Matters

35. Although not cited by the Council in this case, the Commissioner notes that regulation 7(1) allows a public authority to extend the time for compliance from 20 to 40 working days if it reasonably believes that the complexity and volume of the information requested means that it is impracticable to meet the 20 day deadline.³ The Commissioner would encourage public authorities to consider the extension permitted by regulation 7 in respect of requests that appear burdensome.

³ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/time-limits-for-compliance-under-the-eir/#time>

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: 020 3936 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.

Signed

Sarah O’Cathain
Senior Case Officer
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF