

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 15 February 2024

Public Authority: Bristol City Council

Address: City Hall
PO Box 3399
Bristol
BS1 9NE

Decision (including any steps ordered)

1. The complainant requested information from Bristol City Council (“the Council”) relating to a specific planning application.
2. The Commissioner’s decision is that the Council is entitled to rely on regulation 12(4)(b) of the EIR to refuse to provide the requested information. The Commissioner also finds that the Council complied with its obligations under regulation 9 of the EIR to offer advice and assistance.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 24 July 2023, the complainant wrote to the Council and requested information in the following terms:

“On the 31st May Development Control A committee voted to refuse planning permission for application 22/03924/P - Broadwalk Shopping Centre. On the 5th July the committee

considered the application again and voted to grant planning permission.

Please provide me with any correspondence regarding application 22/03924/P and matters relating to Broadwalk that occurred between any of the following after the 31st May meeting and before the 5th July meeting:

- The members of Development Control A committee
 - Council Officers
 - The Mayors Office
 - The Broadwalk developers and any agents of the Broadwalk developers (which includes but is not limited to: Savills, Savills Development, Savills Planning, Galliard Homes, BBS Capital, Keep Architecture, Arup)“
5. The Council responded on 21 August 2023, and refused to provide the requested information, citing section 12 (cost limit) of FOIA as its basis for doing so. On 24 August 2023, the complainant requested an internal review.
6. The Council provided the complainant with the outcome of its internal review on 22 September 2023. The Council revised its position, stating that it was now relying on regulation 12(4)(b) (manifestly unreasonable) of the EIR to refuse to provide the requested information.

Reasons for decision

7. This reasoning covers whether the Council is entitled to rely on regulation 12(4)(b) of the EIR to refuse to provide the requested information.

Regulation 12(4)(b) – manifestly unreasonable

8. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable. In this case, the Council is citing 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.
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. The Council must then balance the cost calculated to respond to the request against the public value of the information which would be disclosed before concluding whether the exception is applicable.

The Council's position

13. In its internal review response, the Council stated that it had conducted an initial search of its email system to identify correspondence dating between 31 May 2023 and 5 July 2023, using the search terms 'Broadwalk Shopping Centre', 'Broadwalk', 'Redcatch Quarter', '22/03924/P' and 'PP-11341514'. This search identified 1500 emails which may fall within the scope of the request.
14. The Council explained that in order to determine whether the 1500 emails identified by its search fell within the scope of the request, it would need to review each email. It estimated that it would take approximately 4 minutes to review each email, and calculated that in total it would take 100 hours to review all 1500 emails (1500 emails x 4 minutes = 100 hours).
15. The Council stated that it would be necessary for it to search all the emails it holds to ensure that it has located all the information held that

falls within the scope of the request. The Council said that if it were to limit its searches to the inboxes of particular teams involved with the planning application referred to in the request, there is a risk that some information within the scope of the request would not be located. Furthermore, the Council stated that searching all emails held using specific search terms is the most efficient method of locating the information held within the scope of the request.

16. The Council argues that in order to comply with the request it would need to divert its limited resources away from other duties and functions which would result in significant delays, disruptions and inconvenience. It therefore considers the request to be manifestly unreasonable.

The Commissioner's position

17. The Commissioner does not consider the Council's estimate of 4 minutes to review each of the 1500 emails identified as potentially falling within the scope of the request to be reasonable. However, he recognises that even if the Council was to take only 1 minute to review each email, the cost of complying with the request would exceed the appropriate limit (1 minute x 1500 emails = 25 hours).
18. The Commissioner considers that complying with the request would place a disproportionate burden on the Council, both in terms of cost and resources. Therefore, the Commissioner is satisfied that the request is manifestly unreasonable and so regulation 12(4)(b) is engaged. The Commissioner will now go on to consider the public interest test.

Public interest test

19. With regards to the public interest test, in its internal review response the Council acknowledged that there is a general public interest in transparency and in understanding how the Council handles large scale planning and development applications, particularly the planning application referred to in the request.
20. However, the Council also considers that complying with the request would place a significant burden by diverting already limited resources away from its core functions. The Council stated that there is already a large amount of information relating to the planning application available within the public domain on the Council's planning portal. It therefore concluded that the public interest in maintaining the exception outweighs the public interest in disclosure of the withheld information.
21. The Commissioner acknowledges that there is a public interest in the transparency of the Council and the Council's planning processes. However, he considers that complying with the request would place a significant burden on the Council's limited resources. Given that there is

already a large amount of information relating to the planning application available within the public domain, he considers the burden to be disproportionate and not in the public interest.

22. The Commissioner's conclusion is that the public interest in the maintenance of the exception provided by regulation 12(4)(b) outweighs the public interest in disclosure of the withheld information.
23. Regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions. As stated in the Upper Tribunal decision *Vesco v Information Commissioner* (SGIA/44/2019):

"If application of the first two stages has not resulted in disclosure, a public authority should go on to consider the presumption in favour of disclosure..." and "the presumption serves two purposes: (1) to provide the default position in the event that the interests are equally balanced and (2) to inform any decision that may be taken under the regulations" (paragraph 19).
24. As covered above, in this case the Commissioner's view is that the balance of the public interest favours the maintenance of the exception, rather than being equally balanced. 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)(b) was applied correctly. Therefore, the Council is not required to provide the requested information.

Regulation 9 - advice and assistance

25. Regulation 9(1) of the EIR says that 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.
26. In its initial response to the request, the Council advised the complainant that they could refine the scope of their request by reducing the time period of their request, or by limiting their request to correspondence between specific teams or people.
27. The Commissioner is therefore satisfied that the Council complied with its obligations under regulation 9 of the EIR to offer advice and assistance.

Right of appeal

28. 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

29. 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.
30. 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

Suzanne McKay
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