

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

Decision notice

Date: 28 March 2024

Public Authority: National Highways
Address: Piccadilly Gate
Store Street, Manchester, M1 2WD

Decision (including any steps ordered)

1. The complainant has requested National Highways (NH) to disclose information relating to a culvert near Welkin Mill in Stockport. NH refused to comply with the request citing regulation 12(4)(b) of the EIR.
2. The Commissioner's decision is that NH is entitled to rely on regulation 12(4)(b) of the EIR. He does not therefore require any further action to be taken.

Request and response

3. On 18 August 2023, the complainant wrote to NH and requested information in the following terms:

"1. Please register a new request(s) for the information below. Please treat each of the bullet points as individual questions, so that if you are going to refuse any of these, the rest may still be considered.

This is an FOI request surrounding the culvert near Welkin Mill, on Welkin Road, Bredbury, Stockport, SK6 2BH. (Crookiley brook culvert).

Google maps link <https://goo.gl/maps/9urn5Bf9xZvgYJdiZ>

- Is this your culvert? Please provide proof either way showing who owns it.
 - Are you responsible for maintenance and clearance of this culvert? Please provide proof either way showing who is responsible for maintenance.
 - Copies of correspondence between National Highways and Stockport Council regarding ownership and maintenance of the culvert.
 - Copies of internal contact between different National Highways employees and departments where they have been trying to establish ownership and maintenance responsibilities of the culvert
 - How many reports have you received in the last 5 years stating that the culvert is blocked/flooding/work needs to be done? What work has been done as a result? Who was responsible for ordering the work to be done or deciding not to act on the reports?."
4. NH responded on 7 September 2023. It refused to disclose the information citing regulation 12(4)(b) of the EIR.
 5. The complainant requested an internal review on 11 September 2023.
 6. NH carried out an internal review and notified the complainant of its findings on 13 October 2023. It upheld its application of regulation 12(4)(b) of the EIR.

Scope of the case

7. The complainant contacted the Commissioner on 4 October 2023 to complain about the way their request for information had been handled. They stated that they have made multiple requests to NH but each has been refused under regulation 12(4)(b) of the EIR. They confirmed that they specifically asked NH to provide as much information as possible within the cost limitations and not just refuse the request as a whole. They do not see where in the legislation this is not permitted.
8. The Commissioner considers that the scope of his investigation is to establish whether or not NH is entitled to refuse to disclose the requested information in accordance with regulation 12(4)(b) of the EIR. He will also address the point the complainant has made regarding NH's approach of refusing requests as a whole under regulation 12(4)(b) and whether it should provide what it can up to the cost limit.

Reasons for decision

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

9. Regulation 12(4)(b) states that a public authority can refuse to disclose information in response to any request that is manifestly unreasonable.
10. NH is relying on regulation 12(4)(b) on the grounds of burden. When refusing a request on the grounds of burden, the Commissioner expects a public authority to provide a reasonable estimate as to how long compliance with the request would take. This estimate should be based on the quickest method of retrieving any relevant information. In most cases, this estimate requires the public authority to conduct a sampling exercise.
11. The Freedom of Information and Data Protection (Appropriate Limit and Fees) sets out an appropriate limit for responding to requests for information under FOIA. The limit for local authorities, such as NH, is £450, calculated at £25 per hour. This applies a time limit of 18 hours. Where the authority estimates that responding to a request will exceed this limit, section 12(1) of the FOIA provides an exclusion from the obligation to comply with the request.
12. Although there is no equivalent limit within the EIR, in considering the application of Regulation 12(4)(b) the Commissioner considers that public authorities may use equivalent figures as an indication of what Parliament considers to be a reasonable burden to respond to EIR requests. However, the public authority 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.
13. NH stated that the request relates to the maintenance of a culvert, legal ownership of which is currently disputed between NH and Stockport Council. It said that there is also related claims as a nearby property flooded – the claim being that a trash screen at the culvert was blocked due to lack of maintenance, which contributed to the flooding.
14. NH advised that to enable it to respond to the request, enquiries were initially made with relevant staff in the North West Drainage Team, its Red Claims team who deal with claims against it, Business Services North West staff who deal with enquiries from the public, and relevant Operational Directorate staff who deal with maintenance. These enquiries resulted in 265 pages of emails to review to determine which are in scope and if any exceptions apply.

15. However, NH commented that this relates to a section of motorway that was built in the late 1980s and there is no time limit on this part of the request. Therefore, to ensure that all information is captured regardless of the age of the information it would also need to do a search of its records store SHARE. NH confirmed that the following indicates the number of emails returned using keyword searches in SHARE:

"Crookilley culvert"

870 emails – last 3 days (2), last 2 weeks (2), last 2 months (2), last 6 months (3), last 12 months (20), last 3 years (103), last 5 years (170), older (640).

"Crookiley culvert (as it is often misspelled):

545 emails - last 3 days (3), last 2 weeks (3), last 2 months (3), last 6 months (3), last 12 months (20), last 3 years (74), last 5 years (99), older (451).

"Welkin Mill culvert":

589 emails - last 3 days (1), last 2 weeks (1), last 2 months (1), last 6 months (3), last 12 months (40), last 3 years (101), last 5 years (173), older (417).

16. NH acknowledges that these figures would be slightly lower for the timing of the request, as the above is based on a search it conducted on 7 February 2024 in order to provide its submissions to the Commissioner. However, even at 2 minutes per email for the remaining emails, this would be around 64 hours of work, just to review the emails to determine which are in the scope of the request and which are not.
17. It explained that there would then be additional work required regarding the application of exceptions, due to ongoing issues regarding ownership of the culvert and connected claims, which will further add to this cost by a considerable margin. NH said it has not calculated how long this would take, as it has already established that the time it would take just to determine which emails are in scope and which are not, would exceed the cost limit prescribed under FOIA by a substantial amount. However, it stated that this is likely to be considerable as it would involve liaison with staff as well as the actual work required to redact and prepare the emails for disclosure.
18. The Commissioner notes the complainant's request is far reaching and other than the last element, which is limited to the last 5 years, it has no timeframe. It therefore covers all the information NH holds falling in scope regardless of age. NH has explained where the information is held and what searches have been required to identify what recorded

information it potentially holds. Taking the emails listed in paragraph 15 above to start and those in the last three years or older, NH has potentially identified 2228 emails falling in scope. At a conservative estimate of 2 minutes per email it would take 4456 minutes or 74 hours for NH to review these to establish if they are relevant to the request or not. Even at 1 minute per email the level of work required is significant and significantly over the cost limit used under FOIA for simple requests.

19. The level of work to simply identify what recorded information falls in scope is burdensome. NH would then be tasked with considering exceptions under the EIR for any withheld information and redacting that information from any disclosure to the complainant. Considering the broad nature of the request, what NH has said it would need to search and go through in order to comply, the Commissioner is satisfied that regulation 12(4)(b) of the EIR is engaged.
20. With regards to considering the request as a whole and NH not providing what information it can up to the cost limit, the Commissioner is satisfied that this is the correct approach to be taken and is in line with his guidance on the cost limit. A request that is specifically framed by the cost limit is not a valid request. In terms of providing any information located during searches, the Commissioner advises against this approach and advises public authorities to stop searches as soon as it realises the request is over the cost limit and contact the applicant, providing advice and assistance on how to make a refined request where appropriate. The 'Estimates and searches' section of the following guidance discusses this in more detail:

[Requests where the cost of compliance exceeds the appropriate limit \(section 12\) | ICO](#)

21. Although the guidance is for the equivalent FOIA exemption – section 12, the principles and what is considered good practice and what is not are applicable here.

Public interest test

22. NH advised that it recognises the public interest in promoting openness, transparency and accountability. It also acknowledged that disclosure improves public awareness and understanding of environmental matters and decision making.
23. However, it considers the numbers effected are small. It said that only a handful of people have been affected by a flood in this area resulting in claims and whilst it appreciates this is of much interest and importance to them, there is little if any documented wider public interest in this matter. NH confirmed that manually assessing all the information

potentially identified as in scope would take a significant amount of time and resources. Time and resources that must be used wisely, effectively and efficiently to ensure that NH can respond to other EIR/FOIA requests on time and met its other statutory functions.

24. The Commissioner accepts there is a public interest in the disclosure of environmental information. It promotes accountability and transparency and enables members of the public to understand more clearly how environmental matters are addressed and how decisions are reached. He also notes that for those small number of people directly affected by the flood referenced by NH and the alleged issues with the calvert the requested information is of huge importance.
25. But private interests are not the same as the wider public interests. The Commissioner notes that the exception is designed to protect the misuse of the legislation and from public authorities having to comply with particularly burdensome requests, as it is recognised that public resources are not infinite. Instead they are stretched and there is a wider public interest in protecting the limited public resources available to public authorities to ensure that they are best placed to manage and perform the statutory functions they are responsible for.
26. Compliance with this request would involve a significant amount of time; time which has been estimated to exceed the cost limit prescribed by FOIA (and used for EIR requests as a guide) by a considerable margin. The Commissioner does not consider this is within the wider interests of the public and for these reasons he has decided that the public interest rests in maintaining the exception in this case.

Regulation 9 advice and assistance

27. Regulation 12(4)(b) of the EIR triggers the duty to provide advice and assistance so far as it is reasonable to do so. The Commissioner notes that NH provided the complainant with advice and assistance on 17 August 2023, when it responded to the complainant's first request. It outlined what it may be able to provide if a revised request was made.
28. The complainant made a revised request (the request the subject of this notice) but it is noted that in addition to what NH recommended, the complainant requested all internal correspondence between the different NH departments and staff. This lead to a further refusal notice citing regulation 12(4)(b) of the EIR.
29. In this second refusal notice NH outlined again how the complainant could narrow the scope of their request and said the complainant could make a fresh request:

"...for copies of correspondence between National Highways and Stockport Council regarding ownership and maintenance of the culvert and how many reports have you received in the last 5 years stating that the culvert is blocked/flooding/work needs to be done? What work has been done as a result? Who was responsible for ordering the work to be done or deciding not to act on the reports?"

30. The Commissioner is satisfied that NH has provided appropriate advice and assistance in accordance with regulation 9 of the EIR. It has suggested how the complainant can narrow a fresh request and it is now for the complainant to decide on whether to follow that advice or not.

Right of appeal

31. 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

32. 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.
33. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Samantha Coward
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