

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 21 March 2024

Public Authority: Buckinghamshire Council
Address: The Gateway
Gatehouse Road
Aylesbury
Buckinghamshire
HP19 8FF

Decision (including any steps ordered)

1. The complainant made multiple requests for information relating to a road development from Buckinghamshire Council (the Council). The Council refused the requests under regulation 12(4)(b) of the EIR (manifestly unreasonable).
2. The Commissioner's decision is that the Council is entitled to refuse all the requests under regulation 12(4)(b).
3. The Commissioner does not require further steps.

Request and response

4. The complainant submitted requests to the Council on 21 and 24 August 2022 (2615369 and 2616069 respectively), a further five requests were submitted on, or around, 1 September 2022. These five requests were amalgamated by the Council under the same reference number (2677990).

5. The requests:

2615369 – “Following a meeting with [name redacted by ICO] on Tuesday 11th January 2022 at 3-3:45 pm we would like access under the freedom of Information Act to any and all communication (emails received and sent/ all letters received and sent all internal & external memos and minutes of any meeting) pertaining to that meeting.”

2616069 – “In a letter [name redacted by ICO] sent to us on 31st January 2022 , he states that [names redacted by ICO] will be in correspondence with colleagues across a number of teams regarding what can be done following the meeting of the 11th January 2022.

We would like access under the Freedom of Information Act to any and all of that correspondence [names redacted by ICO] sent or received including emails sent /received /memos internal /external / letters sent /received and minutes of meetings relating to the above correspondence with colleagues.

This must also include communications (as set out above) including [names redacted by ICO].”

2677990

1 – “Minutes, attendance and any other correspondence relating to the meeting between [name redacted by ICO], the project team working on the A41 scheme and with the Developers representative [name redacted by ICO] mentioned in a letter sent to you on 14th June 2019 by [name redacted by ICO].

We would like any correspondence in whatever format between those individuals and [name redacted by ICO] relating to the subject of our driveway and the junction.”

2 – “On 8th March 2019 we were wrongly copied into an email that [name redacted by ICO] sent to [name redacted by ICO]. Correspondence between [names redacted by ICO] relating to the RSA and also any subsequent correspondence that related to the email sent in error to us.”

3 – “We contacted [name redacted by ICO] to ask for an update on when a Stage 3 Road Safety Audit to be carried out relating to the Paradise Orchard junction was to be carried out. He replied in an email dated 10th December 2018 that he had contacted the Development Team who had in turn contacted [name redacted by ICO]. We would like to see the correspondence in whatever format between all those parties relating to anything to do with the RSA which we believe was carried out in January 2019.”

4 – “On 20th May 2019 [name redacted by ICO] sent us an email stating he was working in the background to progress the situation to resolution. We would like to know what he was doing in order to find a resolution and who he was in contact with in order to do that. We would like to see all correspondence in whatever format to and from [name redacted by ICO] and whoever he was in contact with.”

5 – “initial submission for the Berryfields MDA. In a document to Head of Planning AVDC (which i have attached) [name redacted by ICO] Team Leader Highways DC(Strategy) refers to the initial submission could we please have a copy of the initial submission for the Berryfields MDA.

Could we please have a copy of the consultation on this proposal dated 14th October 2003 as referred to the document attached [name redacted by ICO] in this attached document refers to various meetings and discussions with relevant sections of the 2 authorities and the applicants highways consultants. Could we please have copies of minutes of meetings / emails /letters / memos etc that mentions or relates to the Paradise Orchard /Sir Henry Lee Crescent / A41 Berryfields 4 arm junction.”

6. The Council responded to all the requests on 23 September 2022, advising that it was refusing them all under regulation 12(4)(b) (manifestly unreasonable), of the EIR.
7. The Council provided an internal review on 25 January 2023 and upheld its original response.

Scope of the case

8. The complainant contacted the Commissioner on 26 September 2023, to complain about the application of regulation 12(4)(b) to their requests.
9. Within their complaint to the Commissioner they also raised concerns about the accuracy of information provided, and the way the process for the road development had been carried out. As these issues are not related to compliance with the EIR they are not covered in this notice.
10. The scope of the case is to consider whether regulation 12(4)(b) has been applied correctly to each of the requests.

Reasons for decision

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

11. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose environmental information to the extent that the request for information is manifestly unreasonable. There is no definition of 'manifestly unreasonable' under the EIR, but the Commissioner's opinion is that 'manifestly' implies that a request should be obviously or clearly unreasonable.
12. The position of the Council is that the complainant's request was manifestly unreasonable on the grounds of it being vexatious. In determining whether a request is manifestly unreasonable on the grounds of vexatiousness, our [guidance](#) states that the key question which public authorities need to consider is whether complying with the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
13. Where this is not clear, public authorities should weigh the impact on the authority and balance this against the purpose and value of the request. Where relevant, public authorities will need to take into account wider factors such as the background and history of the request.
14. The complainant has argued that the requests are not manifestly unreasonable since there is public interest in the transparency and openness of local government, and because there is a safety issue linked with the information being requested.
15. It is clear from representations of both the complainant and the Council that the requests are linked to a matter which dates back a number of years. That is, information relating to changes made to the road outside the complainant's property in 2010, and their complaints to the Council about this development.
16. This includes previous information requests and general complaints submitted by the complainant to the current Council, and the former Buckinghamshire County Council, dating back for over four years.
17. The Council stated that both complaints and requests have been given a great deal of attention by the Council (and the former Buckinghamshire County Council). The Council explained that previous requests and complaints about the same, or similar issues, had been comprehensively addressed, and information provided by the Council's Planning and Highways department, its information access team, and by other staff.

18. It also stated that there has also been substantial communication relating to the same subject matter with the complainant under 'business as usual', and via the Council's corporate complaints procedure.
19. It is clear that the complainant is unhappy with the development of the road outside of their home and that various complaints about this development have been made.
20. The Council stated that the multiple and numerous requests to various parts of the Council (and previous Council) is a way of challenging the outcomes of the complaints with which the complainant is unhappy.
21. By the complainant's own admission they have made multiple and repeated requests relating to the same road development. The Commissioner does not have sight of all the requests but is aware of the seven listed in this decision notice, which were submitted within a three week period, and a further request made in October 2023 which is linked to the same road development issue.
22. The Commissioner has considered the value and purpose of the requests and has compared these to the impact that responding to the requests may have on the Council.
23. Given the length of time over which requests have been made, the number of repeated requests, and the amount of time the Council has already spent addressing the various requests and complaints, it is the opinion of the Commissioner that to respond to the requests being considered here, would cause significant disruption to the Council which would negatively impact on its ability to carry out its statutory duties. The Commissioner's view is that this is not a good use of its time or resources.
24. He is of the opinion that, while the information being requested is of interest to the complainant, there is limited value to the requests beyond that personal interest.
25. Given the above, the Commissioner would agree that the number, frequency and narrow focus of the requests on one particular issue dating back to 2010, does appear to be evidence of overly persistent behaviour.
26. The Commissioner's decision is that the requests were manifestly unreasonable and so regulation 12(4)(b) is engaged.

Public interest test

27. Regulation 12(4)(b) is subject to the public interest. So, even though the Commissioner accepts that the requests were manifestly unreasonable, he must still consider where the balance of the public interest lies.
28. Under EIR, there is always a general public interest in disclosure. In considering the public interest test, the Commissioner considers the serious purpose and value of the requests.
29. The Commissioner is mindful of the complainant's personal interest in the information and the impact that it had on access to their property. However he is not convinced that there is a wider public interest argument in this particular case.
30. Road safety in general is, of course, of a high public interest. However this is mitigated in this case as the requests are not linked to road safety but to the complainant's access to their property.
31. The age of the development is also a factor in the weight of public interest. A newly proposed development, or one currently in development, would clearly hold a great deal of public interest in the local area. However, in this case the development in question took place in 2010. This therefore lessens the weight of public interest, since the development is complete and had been for around 12 years by the date of the requests.
32. Other than the complainant's own private interest, the Commissioner is unaware of any wider particularly pressing local interest in this section of road.
33. The Commissioner has also considered the public interest in requiring the Council to continue to respond to requests for the same, or substantially similar, information.
34. It is his opinion that continuing to deal with multiple requests for the same, or similar information, will cause a disproportionate and unjustified level of disruption to the Council, and that this will divert time and resources from fulfilling its statutory functions, which is not in the public interest
35. The decision of the Commissioner is that the balance of the public interest lies in favour of maintaining the exception and that the Council were correct to apply regulation 12(4)(b) to the requests.

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: 0203 936 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.

Ben Tomes
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