

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 25 March 2024

Public Authority: Herefordshire Council
Address: Plough Lane
Hereford
HR4 0LE

Decision (including any steps ordered)

1. The complainant requested information from Herefordshire Council ("the Council") relating to conservation areas.
2. The Commissioner's decision is that the Council is entitled to rely on regulation 12(4)(b) (manifestly unreasonable) to refuse to provide the requested information. He 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 11 August 2023, the complainant wrote to the Council and requested information in the following terms:

"Herefordshire has (I believe) 63 Designated Conservation Areas (CA); it appears that your Council only has boundary plans on its website.

I am requesting copies of the adoption reports for each of the CAs including any supporting information prepared for the adoption of those conservation areas, specifically character statements or other similar information as to the basis of designation.

I request the information be provided in digital form, by email to this address.”

5. The Council refused to comply with the request citing regulation 12(4)(b) (manifestly unreasonable) of the EIR as its basis for doing so.

Reasons for decision

Regulation 12(4)(b) – manifestly unreasonable

6. 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.
7. 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.
8. 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. This is set at £450 for public authorities such as the Council.
9. 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.
10. 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.
11. 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's position

12. In its submissions to the Commissioner, the Council stated that there are 64 conservation areas and 3 extensions to conservation areas in Herefordshire. It considers that information relating to the 3 extensions would fall within the scope of the request as the extensions would have required an adoption report and character assessment.
13. The Council explained that it has located files relating to 21 of the conservation areas in its modern records unit which it would have to review in order to comply with the request. It considers that records relating to the other 43 conservation areas and the 3 extensions would be held in its modern records unit. However, it stated that in order to locate the information, further searches would need to be conducted.
14. The Council confirmed that it has conducted a sampling exercise of the files it has located in its modern records unit by reviewing documents relating to four of the conservation areas. It explained that it took approximately 40 minutes to review documents relating to each conservation area, determine whether those documents contained information within the scope of the request, retrieve that information and then extract the information.
15. The Council stated that in order to comply with the request it would also have to review files held at Herefordshire Archive and Records Centre (HARC) and the Records Office, Worcester, as some information within the scope of the request is located in these archives. The Council explained that information relating to seven conservation areas that date from before 1974 is held at HARC and that information relating to the conservation areas that date from after 1974 are held in the Records Office. The Council estimates that it would take 15 to 40 minutes per conservation area to retrieve any information that falls within the scope of the request from both HARC and the Records Office.
16. Based on its sampling exercise, the Council considers that it would take approximately 40 minutes per conservation area or extension to collate, retrieve and extract any information held in its modern records unit that falls within the scope of the request. The Council stated that as it would also have to review information held at HARC and the Records Office, it estimates that in total, it would take approximately 1 hour per conservation area to provide the information it holds that falls within the scope of the request. Therefore, the Council calculated that it would take 67 hours to provide all the information it holds that falls within the scope

of the request (67 conservation areas and extensions x 1 hour = 67 hours).

The Commissioner's position

17. The Commissioner notes that the Council has stated that per conservation area or extension, it would take 40 minutes to determine whether information held in its modern records unit falls within the scope of the request and then collate, retrieve and extract that information. He considers this estimate to be reasonable as it is based on a sampling exercise. Even if the Council's estimate was halved the cost of complying with the request would significantly exceed the appropriate limit.
18. The Commissioner does not consider that it would be necessary for the Council to review information held at the Records Office for information that falls within the scope of the request. As Commissioner understands it, the Records Office is part of Worcestershire County Council (WCC) and so any information held there would be held by WCC rather than the Council. Therefore, as information held at the Records Office is not held by the Council, the Council would not be required to review that information in order to comply with the request.
19. However, the Commissioner accepts that it would be necessary for the Council to review information relating to seven conservation areas held at HARC in order to comply with the request, as HARC is part of the Council. He therefore considers that in addition to the time it would take to review information held in its modern records unit, the Council would have to spend further time reviewing information held at HARC in order to comply with the request.
20. Therefore, the Commissioner considers that complying with the request would place a disproportionate burden on the Council, both in terms of cost and resources. He 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

21. With regards to the public interest test, in its internal review response the Council acknowledged that disclosure of the requested information would promote transparency, accountability and would increase public awareness and understanding of environmental matters. It stated that in turn, this would enable the general public to more effectively participate in decision making.
22. However, the Council also considers that complying with the request would place a significant burden on the Council by diverting resources

away from its core functions. It stated that this would have an adverse effect on members of the public and so would not be in the public interest. The Council therefore concluded that the public interest in maintaining the exception outweighs the public interest in disclosure of the withheld information.

23. The Commissioner acknowledges that there is a public interest in the transparency and accountability of the Council with regards to conservation areas. However, he considers that complying with the request would place a significant burden on the Council's limited resources. He considers the burden to be disproportionate and not in the public interest.
24. 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.
25. 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).

26. 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

27. 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.
28. Whilst the Council advised the complainant in its initial response to the request that some information within the scope of request is available within the public domain at HARC, it did not advise the complainant that they could refine the scope of their request.

29. However, in its internal review response, the Council informed the complainant that they could refine the scope of the request. It suggested that the complainant could narrow the scope of the request by limiting the request to an individual conservation area rather than all 64 conservation areas. The Council also reiterated that some information within the scope of the request is available within the public domain at HARC.
30. 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

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.

Ian Walley
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF