

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 26 March 2024

**Public Authority:** Cotham Academy School  
**Address:** Cotham Lawn Road  
Bristol  
BS6 6DT

### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to legal cost paid to solicitors/barristers by Cotham Academy School (the school) in connection with defending the claim of the land, named, Stoke Lodge Playing Fields (SLPF), from 2018 to 2023. The school refused the request as manifestly unreasonable citing regulation 12(4)(b) of EIR as the basis for doing so.
2. The Commissioner's decision is that the school is entitled to rely on regulation 12(4)(b) of EIR to refuse to comply with the request. However, the school has breached regulation 9 by failing to provide advice and assistance.
3. The Commissioner requires the school to take the following steps to ensure compliance with the legislation.
  - Provide the complainant with advice and assistance in accordance with regulation 9 of EIR.
4. The school 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 the Act and may be dealt with as a contempt of court.

### **Request and response**

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5. On 3 July 2023, the complainant wrote to the school and requested information in the following terms:

"Having (rather belatedly) watched the recording of the Council meeting and listened to you defending your playing fields, I would like to request the legal costs to the school of fighting the claim of the land. Could this be from 2018 up to and including this hearing (obviously there may be more to come). Thanking you in anticipation."

6. On 7 July 2023, the school asked for clarification to assist in identifying the information that was being requested. The complainant responded to this communication stating:

"...You asked me to specify what fighting the claim means- 'legal costs paid to solicitors/barristers in connection with advice relating to the two town and village green claims (2&3)'. From my research, I can see that the more specific date to begin would be 14 September 2018."

7. The school provided its response to the complainant's request on 20 July 2023. It stated that dealing with the request would create unreasonable costs through the diversion of resources. It therefore refused to comply with the request citing regulation 12(4)(b) of EIR as its basis for doing so.

8. On 21 July 2023 the complainant wrote to the school challenging its reliance on regulation 12(4)(b) of EIR to refuse to disclose the information. They stated:

"...the March 2018 FPGP minutes state all legal costs /professional service fees are recorded under a single financial code so they should be readily identifiable. Also, I would assume that Governors have been kept informed of costs at appropriate intervals - for example, in March 2017 a list of the legal costs for Stoke Lodge was circulated to the FPGP committee." "... there's no indication that during your consideration you have taken into account the public interest. The school has disclosed this information before for a different period so there is a precedent for it being considered to be in the public interest - in April 2017, in response to a FOI request, the School [sic] acknowledged that it had spent almost E91,933 [sic] on legal fees. More recently, in a response dated 3 July 2018 to a further FOI request on What Do They Know (see link 2 below), the School [sic] has quoted legal expenditure of E100,752.73 [sic]."

9. Following an internal review, the school wrote to the complainant on 27 September 2023 and maintained its original position.

## **Scope of the case**

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10. The complainant contacted the Commissioner on 9 October 2023 to complain about the way their request for information had been handled.
11. The Commissioner considers the scope of his investigation is to determine whether the school was correct to rely on regulation 12(4)(b) of EIR to refuse to comply with the request.

## **Reasons for decision**

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### **Is the requested information environmental?**

12. The Commissioner agrees that the requested information is environmental information falling within the scope of regulation 2(1) of the EIR, and therefore the school was right to handle the request under the EIR.

### **Regulation 12(4)(b) -manifestly unreasonable**

13. Regulation 12(4)(b) of the EIR provides that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable. A request can be refused as manifestly unreasonable either because it is vexatious, or on the basis of the burden that it would cause to the public authority.
14. There is no definition of "manifestly unreasonable" under the EIR, but in the Commissioner's opinion, manifestly unreasonable implies that a request should be obviously or clearly unreasonable. One such way a request could be manifestly unreasonable is if a public authority is able to demonstrate that the time and cost of complying with the request is obviously unreasonable.
15. Regulation 12(4)(b) of the EIR exists to protect public authorities from exposure to a disproportionate burden in terms of the amount of time and resources that a public authority has to expend in responding to a request. In effect, it is similar to- section 12(1) of FOIA, where the cost of complying with a request exceeds the appropriate limit.
16. As the Commissioner's guidance on regulation 12(4)(b) explains, whilst the section 12 cost provisions in FOIA are a useful starting point in determining whether the time and cost of complying with the request is obviously unreasonable, they are not determinative. Under the section 12 cost provisions the appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations'). In this case the cost limit is £450 as set out in section 3(2) of the Fees Regulations for public

authorities. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours.

17. However, as noted the section 12 provisions are not determinative in deciding whether a request is also manifestly unreasonable. Furthermore, in assessing whether the cost or burden of dealing with a request is 'too great' under EIR, public authorities will need to consider the proportionality of the burden or costs involved and decide whether they are clearly or obviously unreasonable. This will mean taking into account all the circumstances of the case including:
- the nature of the request and any wider value in the requested information being made publicly available.
  - the importance of any underlying issue to which the request relates, and the extent to which responding to the request would illuminate that issue.
  - the size of the public authority and the resources available to it, including the extent to which the public authority would be distracted from delivering other services; and
  - the context in which the request is made, which may include the burden of responding to other requests on the same subject from the same requester.
18. Where a public authority claims that regulation 12(4)(b) is engaged on the basis of cost, it should provide the requester with advice and assistance where reasonable to help them refine the request so that it can be dealt with within the appropriate cost limit. This is in line with the duty under regulation 9(1) of the EIR.

### **The school's position**

19. The school considered the request, and it estimates that it would take well in excess of the time allowed under the FOIA to respond to it. The Commissioner understands that SLPF is an area of open space which the school leases from Bristol Council under a long lease of 125 years for educational use. In 2014 a risk assessment determined that the playing fields was not safe for students unless the boundaries could be secured and controlled. To address the safeguarding concerns, the school has erected signs and fencing to restrict access when the playing fields are in use. The Commissioner has been informed that this has resulted in an acrimonious campaign to prevent the school from restricting the area. Although this matter was resolved once, the school advises that a further two Town and Village Green (TVG) applications were brought against it in 2018.

20. It explained that the request which relates to records covering a period of five years was likely to involve multiple relevant records. It says that it has had to use a number of legal professional services due to the misconduct of those involved and the strands of different representation and advice the school has required.
21. The school has explained that it uses an accounting software to process all invoices and make payments to suppliers. It elaborates further that the structure of the accounting system is based on budget codes set up according to the requirement of the Academy Trust to report to the government body, the Education Skills Funding Agency as part of its statutory obligation. This is reported under the budget heading of 'Legal and Professional Fees', summarised as 'Other Supplies' in its management accounts. It argues that due to the complexity of the TVG applications and associated legal professional services that the school has had to procure over the five-year period, means that the complainant's request is not a simple one to respond to.
22. It adds that some of the suppliers who have been used for legal professional advice and representation for the TVG case have also, over the time, been used for other legal purposes including employment law and constitutional company law matters. The school says that the system holds details of suppliers, and against each supplier is an invoice number, date of payment and the amount paid. It argues that the way in which the information is stored does not reveal the nature of services provided by each supplier and it is not apparent whether an invoice would fall within the scope of the request without detailed investigations.
23. The school provided the Commissioner with its sampling exercise of what it considers responding to the complainant's request would involve. The sampling exercise considered 397 invoices that the school says could fall within the scope of the complainant's request. It says that to compile the legal costs to barristers and solicitors would require a member of staff to:
  - Search for all invoices from legal and professional advisers during the 5-year period. It explains that this action would involve downloading a pdf version of each invoice from the accounting software and manually organising the information in a Google folder to aid the review of the process. It estimates that this exercise would take one minute per invoice which equates to 6.61 hours for 397 invoices.
  - Download a pdf version of the substantive information that relates to each numbered invoice selected from the budget code and organise this in a Google folder to match the numbered invoice. The school asserts that this step is necessary to aid the

review process. It estimates one minute per invoice which equates to 6.61 hours.

- Review all relevant invoices received over the 5-year period and identify whether those invoices relate specifically to advice relating to the two TVG claims or to other matters. The school says the exercise would involve reading the pdfs downloaded to determine if the expenditure or some of it relates to the school's response to the TVG. It estimates 1.5 minutes per invoice which equates to 9.925 hours.
  - Manually organise the pdfs that fall within the scope of the request into a google folder with the title 'release'. The school estimates 30 seconds per invoice which equates to 3.30 hours.
  - Calculate the total amount spent on legal advice on the TVG applications during the 5-year period. The school estimates this exercise would take one minute on the average per invoice. It has calculated this on the assumption that fifty percent of the original number of invoices used in the sampling exercise falls within the scope of the complainant's request for release. The school has calculated this to be one minute per 198 invoices which equates to 3.3 hours.
  - Review for accuracy, correct inclusion/exclusion by a senior member of staff. The school estimates 45 seconds per invoice which equates to 1 hour 48 minutes.
24. The school estimates that it will take a total of 31 hours 24 minutes to determine whether it holds the information, locate, retrieve and extract the information requested by the complainant. The school has calculated the cost involved to be approximately £587.50.
25. It argues that whilst the complainant's request refers to previous responses about legal expenditure and their contention that the information is easily available, those previous responses related to information prior to July 2018 when the schools coding mechanism allowed the information to be easily identified and collated.
26. In its submission to the Commissioner, the school provided further details of how complying with the request would be burdensome.
27. The school describes a small finance team, none of whom work full time. It says that the Director of Finance and Resources oversees the finance team, the administration team and the Human Resources team. It argues that the team has many pressing demands on its time and resources, particularly, an increase in returns and requirements of academy schools since 2018 which has impacted the team's capacity to the extent of depletion. It argues that there is no spare capacity to

handle requests of this nature which has no contribution to the financial management of the school. It also argues that it does not have staff member dedicated to responding to information requests as they are handled by the heads of department which the request relates to. It therefore maintains that responding to the request would place considerable pressure on already stretched resources. The school maintains that the amount spent overall on legal professional services each year is publicly available in the school's account.

28. The Commissioner has considered the information request together with the complainant's submission on their complaint form, challenging the school's decision. On their complaint form the complainant stated:

"Cotham School has categorised my request as manifestly unreasonable under the EIR. I do not believe that a request to identify five years' of legal costs on a specific matter, amounting to probably around 20-30 invoice in total, comes anywhere close to the threshold for being manifestly unreasonable. The school clearly holds the relevant invoices for audit purposes. We know that the school has previously tracked its legal costs on this matter for internal governance and financial control purposes (recorded in meeting minutes) and that it has considered it to be in the public interest to disclose the amount of public money it has expended on legal fees on this matter in response to previous information requests. I do not believe the school is entitled to use this exemption to block disclosure of this information. No personal data is involved or required".

29. The Commissioner has given particular weight to the school's argument surrounding the way the information requested is held and or recorded on its accounting system. He has also taken into account the period which the request relates to, which is 5 years, and the various legal services that the school has had to procure over this period from different suppliers. He considers that this provides a picture of the time and cost the school will incur should the request be responded to.
30. In reaching his decision, the Commissioner has considered the sample exercise carried out on the 397 invoices. Although the complainant's belief is that there may be only 20 or 30 invoices over the 5-year period, it is apparent from the school's argument that its demand for legal services is not limited to the TVG applications only, and neither is it limited to a single legal firm. Therefore, he considers that any searches will uncover large amount of information because the information requested is also stored together with other information that may not fall within the scope of the complainant's request.
31. The Commissioner has considered the estimates provided by the school through its sample exercise and he agrees that they are reasonable

estimates. In considering whether the cost or burden of dealing with the request is too great, the Commissioner has considered the Upper Tribunal case of *Craven v The Information Commissioner and the Department of Energy and Climate Change* [2012] UKUT442 (AAC)<sup>1</sup>. In this case, the Upper Tribunal stated that, "Taking the position under the EIR first, it must be right that a public authority is entitled to refuse a single extremely burdensome request under regulation 12(4)(b) as "manifestly unreasonable", purely on the basis that the cost of compliance would be too great (assuming, of course, it is also satisfied that the public interest test favours maintaining the exception). The absence of any provision in the EIR equivalent to section 12 of FOIA makes such a conclusion inescapable." (Paragraph 25). When this case was subsequently appealed, the Court of Appeal affirmed the finding.

32. The Commissioner is therefore satisfied that with the school's explanation that to comply with the request would impose an unreasonable burden upon it. The Commissioner has therefore decided that regulation 12(4)(b) of EIR is engaged.
33. As the Commissioner's decision is that regulation 12(4)(b) is engaged, he will now consider the public interest in this case.

### **Public Interest test**

34. The public interest test will consider whether, in the circumstances of this case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
35. The Commissioner recognises that there will always be a public interest in disclosure to promote transparency and accountability of public authorities, greater public awareness and understanding of environmental matters, a free exchange of views, and more effective public participation, all of which ultimately contribute to a better environment.
36. However, the Commissioner also recognises that this must be balanced against the impact that responding to the request would have on the public authority's ability to carry out its duties. The cost of providing a response in this case would be expensive and time consuming, to the point where it would be considered unreasonable under FOIA.

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<sup>1</sup> <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3682>



37. Public authorities have limited resources and there is a strong public interest in them being able to protect those resources in order to carry out their wider obligations fully and effectively.
38. In their complaint to the Commissioner the complainant stated:

“...There is no indication that the school has considered the presumption in favour of disclosure, nor the public interest test. Again this shows an unacceptable disregard of their statutory duties, particularly since the school has considered it to be in the public interest to disclose this information on previous occasions”.
39. In its submission to the Commissioner the school accepted that there is a presumption in favour of disclosure under the EIR and acknowledged that this was not made clear in its response to the request.
40. The school has argued that there is a strong public interest in favour of ensuring that its finite resources are used effectively, and the information placed in the public domain is not used inappropriately.
41. The school argues that there is a wealth of publicly available information relating to the actions it has taken in relation to the TVG applications and its reasons for doing so. It maintains that the school's accounts are open to scrutiny and the global figure spent on legal professional fees is already publicly available. The school says that it has also participated in the public inquiry, spoken at Council meetings, met with local residents and has a website dedicated to SLPF with FAQs and press releases. It adds that it has also set out its position extensively in publicly available written representations in both the TVG application and in previous legal proceedings.
42. It asserts that the school has in place mechanisms for accountability through its board of governors, annual external audit scrutiny and Education Skills funding Agency reporting requirements. It concluded that taking into account the presumption in favour of disclosure it maintains that the public interest in maintaining the exception outweighs the public interest in disclosure.
43. As part of considering the public interest test the Commissioner must bear in mind the presumption in favour of disclosure under the EIR regime. The Commissioner recognises that the issue surrounding SLPF is a contentious one in that two additional applications have been brought against the school. Therefore, he accepts that there is a clear public interest in the school being transparent and accountable for any legal costs incurred as a result of those claims brought against it.
44. When balancing the public interest against the burden that complying with the request would impose on the school, the Commissioner has given greater weight to the information that is already in the public

domain surrounding SLPF matters. Whilst he acknowledges that the amount of legal cost made publicly available by the school is a global figure which does not only cover the TVG applications but also other legal costs, he does not consider there to be wider value in the specific legal cost figure (for the TVG applications) to be made publicly available.

45. The Commissioner considers that in all the circumstance of this case the balance of public interest does not favour disclosure of the requested information, and that the school is entitled to rely on section 12(4)(b) as its basis for not responding to the request.

### **Regulation 9-advice and assistance**

46. 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.
47. It is the Commissioner's view that the school failed to provide advice and assistance to the complainant in its refusal notice and the internal review response. In this regard, the Commissioner considers that there has been a breach of regulation 9 of the EIR.

## **Right of appeal**

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48. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

49. 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.
50. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Esi Mensah**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**