

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

**Date:** 28 March 2024

**Public Authority:** Oxford City Council  
**Address:** Town Hall  
St Aldate's  
Oxford OX1 1BX

**Decision (including any steps ordered)**

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1. The complainant requested information about a Covered Market Roof Refurbishment. Oxford City Council (the "council") disclosed some information and withheld other information under the FOIA exemption for commercial interests (section 43(2)). The council subsequently reconsidered the request under the EIR and disclosed some information, refusing to provide the outstanding information under the exception for manifestly unreasonable (regulation 12(4)(b)).
2. The Commissioner's decision is that the council initially wrongly handled the request under the FOIA and breached regulation 5(1) and regulation 14(1) of the EIR but that it correctly applied regulation 12(4)(b) to refuse to provide the requested information.
3. The Commissioner does not require the council to take any steps.

## Background

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4. Oxford City Council (the "council") is working on a multimillion pound redevelopment of Oxford's historic Covered Market. Separately, the council is investing £3.1m to upgrade the Covered Market, including £1.8m to secure the roof for another 60 to 80 years and £1.3m for internal refurbishment and decorations<sup>1</sup>.
5. The complainant has raised concerns that the project has been poorly executed and the money wasted. They explained that they have submitted requests for information to try to establish as to why the project has dragged on for so long and is over budget and who should ultimately be held accountable.

## Request and response

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6. On 7 October 2023, the complainant wrote to Oxford City Council (the "council") and requested the following information:

"For the past 12 months please provide all email communications sent/received/CC'd regarding the Covered Market Roof Refurbishment project by the following council personnel:

1. Senior Building Surveyor - Project Manager for the re-roofing project
2. Property Services Manager
3. The Chief Executive

Please confirm the time period for which you have provided the email communications."

7. The council responded on 6 November 2023 and confirmed that it was refusing the request under section 14 of the FOIA (vexatious requests).
8. On 30 November 2023 the council provided its internal review response. This confirmed that it was maintaining its position in relation to the application of section 14.

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<sup>1</sup> <https://www.oxford.gov.uk/building-projects/covered-market-redevelopment#:~:text=Separately%2C%20the%20City%20Council%20is,The%20Covered%20Market%2C%20Oxford%20website.>

## **Scope of the case**

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9. On 30 November 2023 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
10. During his investigation it occurred to the Commissioner that, due to the nature of the request, it was likely that the information was environmental in nature and that the request fell to be considered under the EIR. He, therefore invited the council to reconsider the request under the EIR. He also advised that the complainant had agreed to limit the scope of their request to email communications from the Chief Executive and Senior Building Surveyor.
11. The council reconsidered the request under the EIR and issued a new response to the complainant on 19 March 2024. The council disclosed some information to the complainant and confirmed that, due to the time it would take to prepare the remaining information for disclosure, it considered that this would place an unreasonable burden on its resources. It confirmed that it was, therefore, relying on the manifestly unreasonable exception of the EIR (regulation 12(4)(b)) to refuse the request.
12. In considering its duty to provide advice and assistance under regulation 9 of the EIR, the council offered to provide the complainant with a limited amount of information. The complainant declined the council's offer so the Commissioner has proceeded to a decision on its application of regulation 12(4)(b).

## **Reasons for decision**

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

13. The council initially handled the request under the FOIA. During the Commissioner's investigation and, at his direction, the council reconsidered the request under the EIR.
14. Regulation 2(1) of the EIR defines environmental information as being information on:
  - (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
  - (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other

releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;
  - (d) reports on the implementation of environmental legislation;
  - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
  - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);
15. In this case the requested information relates to decisions associated with a covered market roof refurbishment. The Commissioner considers that the requested information is, therefore, likely to be information falling within the definition of environmental information, as set out in regulation 2(1)(c) and regulation 2(1)(f). For procedural reasons, he has therefore assessed this case under the EIR.
16. In view of this, the Commissioner has concluded that the council wrongly (initially) handled the request under the FOIA and breached regulation 5(1) of the EIR. As the council subsequently corrected this the Commissioner does not require it to take any steps in this regard.

#### **Regulation 14 – refusal to disclose information**

17. In the circumstances of this case the Commissioner has found that although the council originally considered this request under FOIA it is the EIR that actually apply to the requested information. Therefore, where the procedural requirements of the two pieces of legislation differ, it is inevitable that the council will have failed to comply with the provisions of the EIR.
18. In these circumstances the Commissioner believes that it is appropriate to find that the council breached regulation 14(1) of EIR which requires a public authority that refuses a request for information to specify, within 20 working days, the exceptions upon which it is relying. This is

because the refusal notice which the council issued (and indeed its internal review) failed to cite any exception contained within the EIR as the council actually dealt with the request under FOIA.

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

19. 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. 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.
20. 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.
21. 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.
22. The Commissioner's guidance confirms that, under the FOIA, an authority cannot take into account the cost of considering whether information is exempt under section 12 but it can take it into account under section 14(1) (vexatious requests). This is because section 12 limits the activities that can be considered when deciding if the appropriate limit would be exceeded. This is not an issue under the EIR. The costs of considering if information is covered by an exception can be taken into account as relevant arguments under regulation 12(4)(b)<sup>2</sup>.

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<sup>2</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/regulation-12-4-b-environmental-information-regulations-manifestly-unreasonable-requests/>

23. The EIR differ from the 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.
24. While the Fees Regulations relate specifically to the 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. Authorities must 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**

25. The council has explained that, with regards to the emails sent/received/cc'd by the Senior Building Surveyor, it was unable to provide all of the requested information for this question as to do so would create an excessive burden on the council.
26. The council confirmed that it had identified approximately 150 emails between the Senior Building Surveyor and the roofing contractor between March and November 2023 and that to search for and identify all relevant emails sent/received/cc'd by this officer for the full requested time period would result in several times this amount and would also require time for reviewing and applying any relevant exceptions, which is included in calculating the burden of responding to a request under EIR.
27. In its response, the council offered to provide the complainant with emails between the Senior Building Surveyor and the roofing contractor between March and November 2023. This was offered by way of compromise as a way of partially satisfying the complainant's request and potentially obtaining informal resolution. However, the complainant declined the council's offer and asked for the same information for the period 01 June 2022 and 28 February 2023 to be provided. As this extended the timeframe of the original request and technically constituted a new request for information the council declined to take this step.
28. In addition to the time and resources the council considers that complying with the request would involve, the council has also raised concerns that, based on the history of requests on this subject submitted by the complainant, even if all the requested information was disclosed, this would only lead to further requests.

29. The council has provided evidence that the complainant submitted 8 requests between 2 August and 9 October 2023 for information relating to the Covered Market roof project (the "Project"), often with requests overlapping/on consecutive days, alongside follow up questions and internal review requests.

### **The Commissioner's conclusions**

30. The Commissioner's guidance sets out a number of factors which authorities should consider when assessing whether the cost or burden of dealing with a request is too great. These include the following considerations:

- 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 shed light on that issue;
- the size of the organisation and the resources available, including the extent to which you would be distracted from delivering other services; and
- the context in which the request is made, which may include the cost of responding to other requests on the same subject from the same requester<sup>3</sup>.

31. In this case, the subject matter of the request relates to a Project involving public expenditure and which potentially affects a significant number of people, as well as having some impact on the built environment. There are, therefore, grounds for accepting that the Project is a valid subject in the context of transparency and accountability.

32. However, the Commissioner considers that this does not automatically mean that any and all information associated with the Project should be made available. To this end, the Commissioner has considered the complainant's specific request for all emails which reference the Project.

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<sup>3</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/regulation-12-4-b-environmental-information-regulations-manifestly-unreasonable-requests/>

33. The Commissioner considers that the extent to which information might be of value to the broader public is a relevant consideration when deciding whether the additional burden imposed by a request is justified.
34. The council confirmed that it reviewed a number of emails from the period between March and November 2023 and concluded that they do not address the complainant's voiced concerns about increases to project time and budget as they are very operational, day to day communications. On this basis, the council has argued, the value in receiving these emails from any time period in the project would be very limited. The Commissioner has viewed a sample selection of the emails and he is minded to agree with the council's analysis of the relative value of the information.
35. The council has further argued that its concern would be that to release the information (which would not address the focus of the complainant's concerns) would only lead to further requests, creating a continued burden on the council in terms of disproportionate resources being used with limited public interest.
36. The Commissioner has also considered the council's evidence regarding the number of requests made by the complainant about the Project and the disposition of the complainant regarding the making of supplementary requests and enquiries. The Commissioner is mindful that, where requests are systematically met with inadequate responses it may be entirely reasonable for a requester to persevere with further requests and enquiries.
37. In this case, though, having concluded that the council's estimates for complying with the request are reasonable and having factored in the relative value of the information and the pattern of requesting displayed by the complainant, the Commissioner considers that regulation 12(4)(b) is engaged; this is because he is satisfied that responding to the request would impose a disproportionate burden upon the council.
38. However, under the EIR, if regulation 12(4)(b) is engaged, the Commissioner must still consider whether the public interest rests in favour of the request being responded to in spite of the fact that the exception is engaged. The test is whether, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
39. When carrying out the test, regulation 12(2) requires an authority to apply a presumption in favour of the disclosure of the information.



### **Public interest in disclosure**

40. The council has acknowledged that there may be public interest in information about a high profile building project in Oxford and the details of project activity and expenditure. It noted the concerns raised by the complainant about delays and expenditure associated with the project and agreed that these may contribute to the public interest weighting in favour of disclosure.
41. The complainant has suggested that the Project has been poorly managed, that it has overrun and that this has resulted in additional public expenditure.
42. The Commissioner recognises that there is a legitimate public interest in transparency around expenditure on developments which have an impact on the environment and the local population. He accepts that this interest would be heightened in cases where there are concerns about mismanagement or misuse of public resources.

### **Public interest in withholding the information**

43. The council considers that a large amount of information has previously been released on this subject in responses to other requests for information. In order to comply with the request, the council's resources would be diverted to searching for, retrieving and reviewing a huge number of emails which may not provide the definitive answers to the concerns raised by the complainant, and which has a high likelihood of an adverse impact on the ability of officers to conduct their work effectively. In the council's view, there is a lower public interest in disclosing all the requested information than in withholding it.

### **Balance of the public interest**

44. The Commissioner recognises that there is a general public interest in transparency and accountability in matters relating to public expenditure and to decisions having an effect on the environment and the local community. He accepts that the Project provides a specific instance of this and he has given it due weighting in his consideration of the public interest balance.
45. The Commissioner recognises that the complainant has specific concerns that the Project has been mismanaged. If this were the case, the Commissioner considers that this would provide an additional weighting in favour of the disclosure of information associated with this.

46. However, the Commissioner has been unable to find any evidence that there are broader concerns about the council's handling of the Project. The available evidence suggests that concerns are largely confined to the complainant and a limited number of others who have submitted requests to the council on this matter. The public interest in the context of the EIR relates to the broader interests of the public which can sometimes include the public interest in allowing public authorities to carry out their core functions effectively without this being hindered by burdensome requests.
47. In relation to the council's concerns about the number of requests submitted by the complainant and the likelihood of disclosure resulting in further requests and enquiries, the Commissioner notes the council's concerns but he is not convinced that this argument carries much weight at this point.
48. The Commissioner has accepted that the Project is a legitimate subject for public scrutiny, however, he does accept that a pattern of ongoing enquiries and requests for information, the disclosure of which would not necessarily illuminate the matter for the broader public, might provide evidence of an unreasonable pattern of requesting.
49. In this case, as noted above, the Commissioner has accepted that there is a general public interest in transparency around the Project; however, for the reasons set out above, he does not accept that the specific information requested in this case would necessarily be of great value to the broader public. Having viewed a selection of the requested emails the Commissioner thinks it unlikely that the information would significantly add to public understanding of the matter.
50. The Commissioner considers that this, combined with the burden that making the information available for disclosure, would place on the council's resources, creates a significant public interest weighting in favour of maintaining the exception.
51. In this case, having considered the above, the Commissioner is satisfied that for the council to respond to the request, the time it would take is significant and disproportionate compared to the public interest in the disclosure of the information. The Commissioner is therefore satisfied that, in this case, the balance of the public interest lies in the exception being maintained.
52. The Commissioner is therefore satisfied that the council was entitled to rely on regulation 12(4)(b) to refuse the request.
53. In reaching his conclusions in this case, the Commissioner has also referred to the conclusions he reached in another decision notice relating

to a separate request made by the complainant to the council for information associated with the Project<sup>4</sup>.

**Regulation 9 - advice and assistance**

54. 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.
55. In offering to provide the complainant with a more limited scope of information and in offering to meet with the complainant to discuss their concerns about the Project, the Commissioner satisfied that the council complied with its obligations under regulation 9 of the EIR to offer advice and assistance.

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<sup>4</sup> ICO case reference: IC-271293-P3L6

## **Right of appeal**

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56. 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)

57. 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.
58. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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