

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 11 July 2024

Public Authority: Devon County Council
Address: County Hall
Exeter
Devon
EX2 4QD

Decision (including any steps ordered)

1. The complainant requested information in relation to a footpath. Devon County Council (the council) refused the request under regulation 12(4)(b) of the EIR as manifestly unreasonable.
2. The Commissioner's decision is that regulation 12(4)(b) is not engaged.
3. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the complainant in accordance with the EIR, without relying on regulation 12(4)(b) of the EIR.
4. The council must take these steps within 30 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

5. On 2 November 2023 the complainant made the following information request to the council:

“Please provide any documentation that justifies tree felling costs on the [named footpath redacted], from February 2023”

6. The council responded on 30 November 2023 refusing the request as manifestly unreasonable under regulation 12(4)(b) of the EIR and upheld its position in its internal review on 12 January 2024.

Scope of the case

7. The complainant contacted the Commissioner on 6 February 2024 to complain about his request being refused.
8. The scope of the case is for the Commissioner to determine whether the council is able to rely on regulation 12(4)(b) of the EIR to refuse the request.

Reasons for decision

Regulation 12(4)(b) – Manifestly unreasonable

9. 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 for a public authority to respond to in any other way than applying this exception. The Commissioner has published guidance¹ on regulation 12(4)(b).
10. The Commissioner recognises that, on occasion, there is no material difference between a request that is vexatious under section 14(1) of the Freedom of Information Act 2000 (the FOIA) and a request that is manifestly unreasonable on vexatious grounds under the EIR. The

¹ [Manifestly unreasonable requests - Regulation 12\(4\)\(b\) \(Environmental Information Regulations\) | ICO](#)

Commissioner has therefore considered the extent to which the complainant's request in this case could be considered vexatious.

11. The term 'vexatious' is not defined in the legislation. In *Information Commissioner vs Devon County Council and Dransfield* the Upper Tribunal took the view that the ordinary dictionary definition of the word is only of limited use, because the question of whether a request is vexatious ultimately depends upon the circumstances surrounding that request. The Tribunal concluded that 'vexatious' could be defined as "...manifestly unjustified, inappropriate or improper use of a formal procedure" (paragraph 27). This clearly established that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.
12. In the Commissioner's view, the key question for public authorities to consider when determining if a request is vexatious is whether the value and purpose of the request justifies the distress, disruption or irritation that would be incurred by complying with it.
13. The Commissioner's understanding is that the overall issue in this case is in relation to a dispute about a specific public footpath.
14. The council has responded to the Commissioner's enquiries stating that the complainant has submitted eight separate information requests to it over a nine month period, the request above being the most recent.
15. The council has told the Commissioner that the amount of time taken to respond, and the repetition within these requests have placed a disproportionate burden upon it.
16. Eight requests over a nine month period, in isolation does not, in the Commissioner's view, seem a disproportionate amount of requests and a council should anticipate that it may receive an increase of correspondence from an individual when a dispute arises. But the circumstances of the case and the time taken to deal with the requests can be taken into consideration.
17. However, the council has not expanded on its statement about the amount of time it has taken to respond to these requests placing a disproportionate burden on it. Without any supporting information or examples on how much time or resources have been involved in dealing with the requests, the Commissioner is unable to validate such statements.
18. The council has advised the Commissioner that during this period the complainant has continued an ongoing dispute with the council through its complaint procedure and the Local Government Ombudsman (the LGO) covering the same issue.

19. The Commissioner has reviewed the LGO report which found there was no fault in the way the council had dealt with the issue of where the public footpath runs.
20. Although in relation to the same area, the complainant's request is about the felling of trees and not specific, in the Commissioner's view, to the position of the footpath. Which was the consideration of the LGO's decision.
21. It does demonstrate that the council would have had to spend time dealing with the ongoing dispute, but as previously stated, when a dispute arises a public authority should expect that there may be an increase in correspondence and resources required to be used in order to address disputes.
22. The council has also stated to the Commissioner that outside of the FOIA / EIR process, the complainant has been given a plethora of advice and assistance in relation to the footpath. It has offered to meet him in person, had phone consultations with him, mediated and responded to his many emails, sometimes up to five a day.
23. The Commissioner sees that offering to meet, discuss and mediate with the complainant is a positive action from the council. However, again it has not expanded on this for the Commissioner to better understand the outcomes and results of these actions.
24. Also, to simply state it had many emails, sometimes up to five a day, does not provide an adequate picture for the Commissioner to fully understand how much correspondence the council has been dealing with.
25. The council has also told the Commissioner that the complainant was advised that they have previously been provided with the information sought via the EIR and other avenues within the council.
26. The Commissioner notes this was stated in its internal review response. But again, the council has not provided the Commissioner with any evidence to show that it has previously provided the specific information requested in this case.
27. On review of the council's submissions, the Commissioner has not been convinced that there has been sufficient distress, disruption or irritation placed on it in order to override the value and purpose of the request.
28. The Commissioner therefore finds that regulation 12(4)(b) of the EIR is not engaged in relation to the above request.

Right of appeal

29. 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

30. 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.
31. 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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