

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 3 May 2024

Public Authority: Causeway Coast & Glens Borough Council
Address: Civic Headquarters
Cloonavin
66 Portstewart Road
Coleraine
BT52 1EY

Decision (including any steps ordered)

1. The complainant requested from Causeway Coast & Glens Borough Council (the Council) information regarding a Planning Enforcement Notice. The Council refused the request and cited regulation 12(4)(b) (manifestly unreasonable) of the EIR.
2. The Commissioner's decision is that the Council was entitled to rely on regulation 12(4)(b) of the EIR to refuse to comply with the request. However, the Commissioner finds that the Council breached its obligations under regulations 14(2) and 11(4) of the EIR.
3. The Commissioner does not require the Council to take any further steps as a result of this decision.

Request and response

4. On 5 July 2023 the complainant requested information under the FOIA of the following description:

"On 11 May 2022. Causeway Coast and the Glens Borough Council (the Council) Planning Department served an Enforcement Notice under

Section 131 (1) of the Planning Act (Northern Ireland) 2011 (the Act) due to a breach of the Act.

The Notice was served on:

The Owner of [address redacted], [name of company redacted] And [name redacted] who it was thought had an estate in the property.

It has now been established that [name redacted] an employee of the Council, is the owner of the land and property to which the Notice relates. Can you confirm what steps were taken to identify the Owner before the Notice was served,

1. Was Notice served under Section 133 of the Act?
2. Had the employee registered his estate in the property with the Council?
3. Can you confirm that the notice has been complied?"
5. On 18 August 2023 the Council responded. It refused the request under regulation 12(4)(b) (manifestly unreasonable requests) of the EIR.
6. On 21 August 2023 the complainant asked for an internal review.

Reasons for decision

7. This reasoning covers why the Council was entitled to rely on regulation 12(4)(b) of the EIR to refuse to comply with the request.

Regulation 12(4)(b) – manifestly unreasonable

8. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose environmental information to the extent that the request is manifestly unreasonable. In this case, the Council cited 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.
9. 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.

10. 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.
11. 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.
12. 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.
13. Regulation 12(4)(b) sets a robust test for a public authority to pass before it is no longer under a duty to respond. The test set by the EIR is that the request must be “manifestly” unreasonable, rather than simply being “unreasonable”.
14. The Commissioner considers that the term “manifestly” means that there must be an obvious or clear quality to the identified unreasonableness. It should also be noted that public authorities may be required to accept a greater burden in providing environmental information than other information.
15. The information in this case, relates to a Planning Enforcement Notice served on an owner of a specific property. The Council’s actions in this respect would have an effect on the environment. The Commissioner therefore agrees the requested information is environmental and that the Council was correct to handle the request under the EIR.

The complainant’s position

16. The complainant disagrees with his routine enquiry of 5 July 2023, being handled as a request for information under FOIA/EIR. He also disputes the Council’s position that his requests are manifestly unreasonable and its refusal to comply with the request under regulation 12(4)(b) of the EIR.

17. The complainant argued that his queries do not make unfounded allegations, place a burden by number, or, by pattern of request making. He believes his enquiries of 5 July 2023 to be simple and of a routine nature. The complainant said his queries do not target an officer of the Council, and do not cause a disproportionate level of disruption, irritation or distress to the Council or the concerned officer.

18. The complainant explained why he believes his queries are not manifestly unreasonable, and set out his reasons to each part of his request. With regard to question 1:

“Before the enforcement notice was served, there was difficulty establishing who owned the property where the breach of planning occurred. Therefore, it would have been reasonable to serve notice under section 133 on all with an interest in the property as it may have provided evidence on who the actual owner and/or responsible person was. The Council’s failure to establish the owner may have put the public at risk of exposure to asbestos fibres.”

19. The complainant made further arguments relating to question 1 and also stated “this question is about the Council’s action and not the action of the Council’s member of staff the Council say is being targeted.” With regard to question 2, the complainant argued that he had not targeted the employee with this question. He said, “the Council named the employee and served notice on him for a breach of planning regulations. It is my understanding Council employees should declare their interest if the property is within the Council’s borders.” The complainant said it would have been reasonable to check if the employee had registered that interest.

20. With regard to question 3 of the request, the complainant considered this to be a simple routine question. He emphasised his view that this question is also about “the Council’s action not the action of the Council’s member of staff that the Council say is being targeted”. The complainant concluded his argument by stating that these questions are not manifestly unreasonable.

The Council’s position

21. The Council said this request is targeting an officer of the Council in which the complainant had ongoing dealings with. This, it argued, is seen to be a personal attack on the named Officer and is causing a disproportionate level of disruption, irritation or distress both to the organisation and the concerned Officer.

22. The Council stated it had received 46 requests from the complainant (or third parties acting on his behalf) since 2016. It said 13 of these had been dealt with as 'normal business' or 'general correspondence' and that the remaining 33 were dealt with under FOI, the EIR and DPA. The Council noted key points from these statistics to the Commissioner:
- *"28% of the 46 have been dealt with as 'normal business' or as 'general correspondence',*
 - *72% have been dealt with as requests for information,*
 - *65% of the 43 have related to a Council officer,*
 - *52% have related to the same subject matter – namely, the work conducted to a Council owned building abutting the requester's property,*
 - *there have been 10 incidences of Council receiving multiple requests simultaneously and aside from the current complaint, there has been one complaint made to the ICO – IC-46068-S5P5 relating to this requester. The complaint was made by a third party, [name redacted], who had submitted a request for information to Council on behalf of [name redacted]. The ICO issued its Decision Notice on 8 June 2021 requiring Council to take no further steps".*
23. The Council provided the Commissioner with a detailed breakdown relating to the complainant's requests and enquiries. It also reported on receiving correspondence from the complainant via at least six different methods: his personal email address, his sibling's email address on behalf of the complainant's parent, via post, via a third party, via whatdotheyknow.com and via a pseudonym. The Council said the complainant or third parties acting on his behalf, had issued correspondence to at least six mailboxes or members of staff across the Council. These included: Corporate Services inbox, Information Governance Officer's inbox, Chief Executive's inbox, Head of Service of Infrastructure & Capital Works, Head of Service of Policy & Community Planning and three different Council officers within the Health & Built Environment Service Area.
24. The Council said the complainant's sustained contact since 2016 has had a significant impact on the Council's resources. It drew the Commissioner's attention to the figures illustrated within Appendix A, and that 52% of the complainant's queries related to the same subject matter.

25. The Council said it assessed the similarities with previous requests from the complainant, and the fact that there was a live injunction against him brought by the Council official, to whom the request related.
26. The Council believed the complainant to have taken on a 'scattergun approach' in the manner he has sought information. It emphasised the complainant's use of different modes of contact and him contacting a number of different sections or personnel within the Council for the past eight years. The Council said the figures reported only reflect the records held by the Information Governance Team, and do not take into account the complainant's contact with other service areas across the Council. It explained that the frequency of the requests and instances of overlap has significantly increased the amount of time officers have had to divert their attention away from front line duties, in order to manage the requests.

The Commissioner's decision

27. The Commissioner considered the arguments by both the complainant and the Council. He acknowledges the complainant's interest in this specific Enforcement Notice which the complainant has concerns about. The Commissioner also recognises that the Council addressed the complainant's queries which led to further enquiries and requests for information from the complainant. Having considered the background details, the Commissioner understands the wider context relating to this request. He notes the resource implications on the Council during the eight years of receiving numerous enquiries/requests on this matter.
28. The Commissioner is also aware of the significant challenge these increased number of requests are having on it. He notes that the Council received evidence (repeat requests) stating the complainant's "desire to deliberately cause annoyance to it and the Council officer rather than pursuing a legitimate intention to obtain information." Responding to all the complainant's correspondence clearly generates further questions and accusations from the complainant.
29. Taking into account the collection of correspondence from the complainant (relating to the same subject), the Commissioner accepts this would create an additional amount of work and would have a detrimental impact on Council officers being able to undertake their core functions.
30. The Commissioner is satisfied that the exception at regulation 12(4)(b) is engaged and will go on to consider the public interest test required at regulation 12(1)(b) of the EIR.

Public interest test

31. 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.
32. There will always be some public interest in disclosure to promote transparency and accountability of public authorities, greater public awareness and understanding of environmental matters.
33. The Council recognises there is always some public interest in public authorities disclosing information, as this promotes transparency and accountability for decisions and actions taken. However, the Council decided that the public interest in this case is best served by not disclosing the requested information. Given the history of this matter including the live injunction, the Council determined there was a basis on which to apply this exception. It believes that on balance, the public interest in maintaining the exception outweighs disclosure.

Conclusion

34. Taking into consideration the significant burden that responding would place on the Council, the Commissioner's view is the balance of the public interests favours the maintenance of the exception. The commissioner's decision, whilst informed by the presumption provided for in regulation 12(2) is that regulation 12(4)(b) of the EIR was applied correctly.

Procedural matters

Regulation 5(2) – Time for responding

35. Regulation 5(2) of the EIR states information shall be made available as soon as possible and no later than 20 working days after the date of receipt of the request.
36. Regulation 14(2) of the EIR states that a refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.
37. In this case, the request was made on 5 July 2023. The Council did not provide its response until 18 August 2023. This is 33 working days and is therefore not compliant with the timeframe set out in the EIR.

Regulation 11 – Representations and reconsideration

38. Regulation 11 of the EIR covers public authorities' obligations in relation to the carrying out of internal reviews of the handling of requests for information.
39. Regulation 11(4) of the EIR provides that a public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the date of receipt of the representations.
40. The complainant asked for an internal review on 21 August 2023. Following the Commissioner's intervention, the Council provided its review response on 5 February 2024, more than 40 working days later.
41. From the evidence presented to the Commissioner, it is clear the Council failed to comply with its reconsideration obligations under the EIR. The Commissioner finds that the Council therefore breached regulation 11(4) of the EIR.

Right of appeal

42. 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

43. 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.
44. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Joanna Marshall
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