

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 29 July 2024

Public Authority: Kent County Council
Address: Sessions House
County Hall
Maidstone
Kent
ME14 1XQ

Decision (including any steps ordered)

1. The complainant requested information from Kent County Council ("the Council") regarding parking on a paved vehicle access point outside a particular residential address. The Council refused the request, citing regulation 12(4)(b) (manifestly unreasonable) as its basis for doing so.
2. The Commissioner's decision is that the Council is entitled to refuse the request under regulation 12(4)(b).
3. The Commissioner does not require further steps.

Request and response

4. On 27 December 2023, the complainant wrote to the Council and requested information in the following terms:

"Please advise what agreement is in place for a vehicle crossing and/or parking on the highway verge outside [address redacted]."
5. The Council responded on 25 January 2024 and refused the request, citing regulation 12(4)(b) (manifestly unreasonable) as its basis for doing so.
6. Following an internal review the Council wrote to the complainant on 26 February 2024. It maintained its original position.

Reasons for decision

Regulation 12(4)(b) – Manifestly unreasonable requests

7. Regulation 12(4)(b) of the EIR states that: “For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that— (b) the request for information is manifestly unreasonable;”
8. The Commissioner has issued public guidance¹ on the application of regulation 12(4)(b). This guidance contains the Commissioner’s definition of the regulation, which is taken to apply in circumstances where either the request is 1) vexatious, or 2) where the cost of compliance with the request would be too great. If engaged, the exception is subject to a public interest test.
9. In this case, the Council considers that circumstance 1) is applicable.
10. The Commissioner has published guidance on vexatious requests². As discussed in the Commissioner’s guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. Sometimes, it will be obvious when requests are vexatious, but sometimes it may not. In such cases, it should be considered whether the request would be likely to cause a disproportionate or unjustified level of disruption, irritation or distress to the public authority. This negative impact must then be considered against the purpose and public value of the request. A public authority can also consider the context of the request and the history of its relationship with the requester when this is relevant.
11. While section 14(1) of the FOIA effectively removes the duty to comply with a request, regulation 12(4)(b) of the EIR only provides an exception. As such the EIR explicitly requires a public authority to apply a public interest test (in accordance with regulation 12(1)(b)) before deciding whether to maintain the exception. The Commissioner accepts that public interest factors, such as proportionality and the value of the request, will have already been considered by a public authority in

¹ <https://ico.org.uk/for-organisations/eir-and-access-to-information/guide-to-the-environmental-information-regulations/refusing-a-request/#when-can-we-refuse-a-request-for-environmental-information-3>

² <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-14-dealing-with-vexatious-requests/>

deciding whether to engage the exception, and that a public authority is likely to be able to 'carry through' the relevant considerations into the public interest test. However, regulation 12(2) of the EIR specifically states that a public authority must apply a presumption in favour of disclosure. In effect, this means that the exception can only be maintained if the public interest in refusing the request outweighs the public interest in responding.

The Council's position

12. By way of context, the Council explained that the residents of the address named in the request applied for permission to widen their driveway to create a vehicle access point over the abutting grass verge in 2022. The Council had no concerns about this proposal, so the permission was granted. The Council also stated there is no indication that this approval was inappropriate or improper.
13. The Council also provided an image to the Commissioner of the outside of the property, showing the driveway and access point. The relevant piece of land, between the existing driveway and the road, which was previously part of a grass verge, has been paved over. Therefore, for the sake of clarity, the subject matter of the request is the use of this paved vehicle access point, for which permission has been granted, rather than parking on or driving over a grass verge.
14. The Council's position is that this request is vexatious on the grounds of the cumulative burden of a number of related requests, the motive of the requestor and the lack of value or serious purpose of the request.
15. Regarding the cumulative burden of a number of related requests, the Council states that this was the seventh of a series of related requests submitted to the Council by the complainant within a year.
16. The Council provided details to the Commissioner regarding how it handled the previous six requests. All information held was disclosed in response to the first two of the previous six requests. In response to the third the Council applied regulation 6(1)(b) as the information requested was publicly available. The Council informed the complainant that the information requested in the fourth request was not held. The Council's position is that the fifth and sixth requests requested the same information as the fourth request. No complaints were submitted to the Commissioner regarding the Council's handling of these previous requests.
17. The Council also considers that it is unlikely that responding to this request would resolve the situation to the complainant's satisfaction. Rather, it would simply act as a springboard for further enquiries and

requests, generating additional burden. This position is based on having exchanged extended correspondence with the complainant since 2022 on this issue, resulting in a formal complaints process and Local Government Ombudsman (LGO) appeal being exhausted.

18. The Council considers that the complainant, who lives opposite the property named in the request, is motivated primarily by a neighbour dispute, regarding how the residents of the property named in the request are parking near the complainant's property. The Council's view is that, in making this request, the complainant is attempting to reopen a settled matter.
19. The Council explained that the complainant has raised numerous complaints with the Council about the neighbour at this property, ranging from the presence of skips outside the property during an extension, to the widening of the driveway access point and subsequent parking on this land. The Council believes this dispute may have been triggered by a planning application for an extension to the property named in the request submitted in 2021.
20. Regarding the vehicle access point specifically, the Council has stated that the Council's Highways department received an enquiry from the complainant in April 2022 about the property opposite paving over some of this grass verge outside their house. This enquiry was closed because there were no concerns about the access point. Subsequently the complainant raised concerns about the residents parking on the access point.
21. As a result of this complaint, Council officers attended the site in December 2022 to carry out further inspections to check for inappropriate parking. The Council states that council officers verbally discussed parking allowances with the residents to establish that the hard standing had been allowed for access only, they subsequently sent a written reminder via email to the residents and also advised the complainant of the action taken through the complaints process. They also invited the complainant to submit evidence of inappropriate parking should it occur in the future.
22. The Council further stated that in May 2023 the complainant wrote to the Council's Highways Definitions Team, asking whether a stopping up order had been issued. This refers to the process by which a piece of highways land ceases to be publicly maintained. They were advised that no such order had been issued, meaning the verge continued to be publicly maintainable.

23. The Council also explained that the complainant is dissatisfied that the Council has not taken formal enforcement action against the residents of the property for parking on the vehicle access point.
24. The Council's position is that it has taken proportionate action in response to the complaint raised about parking on the vehicle access point.
25. The Council highlighted in its submissions to the Commissioner that the road receives limited amounts of rural and residential traffic and that it is the professional opinion of qualified highways officers that there is minimal risk posed to pedestrians or emergency services vehicles, given the nature of the road and low volume of traffic.
26. As stated above, council officers met with the property owners to reiterate that the vehicle access point is to be used exclusively for access and not parking, later issuing an enforcement email containing a reminder of these expectations. The Council also informed the Commissioner that, to monitor this situation, highways stewards regularly visit the area to check both the local highways condition and to verify whether inappropriate parking is occurring. The outcome of these inspections is recorded on the Council's case management systems.
27. Regarding the resources already used in relation to this issue, the Council stated that the complainant has raised this and adjacent issues through persistent correspondence, statutory information requests and formal complaints. Managing these enquiries is the responsibility of the Folkestone highways unit, which consists of 5 officers. Over the last 2 years, this has resulted in a significant diversion of these officers' time and attention, due to the need to respond to correspondence and complaints, carry out regular site inspections and consider regulatory appeals.
28. The Council's position is that the action it has taken represents a proportionate approach based on the Council's risk assessments and the road's limited traffic volume.
29. Regarding the fact that it has attempted to resolve this issue informally rather than taken formal enforcement action it stated, "the Council's approach on enforcement action is to attempt informal resolution and ensure there is sufficient evidence for any further action to be taken. Proportionality is a key element of these decisions, as we have an obligation to ensure public funds are well utilised. For example, it would be disproportionate and prohibitively expensive to launch court action over a technical violation that could be resolved without cost through engagement with the relevant stakeholders".

30. The complainant escalated their complaint about a lack of formal enforcement action to the LGO. The outcome of this complaint was that, in October 2023, the LGO declined to investigate after finding there was no indication that maladministration had occurred.
31. The complainant subsequently made further complaints to the Council regarding the issue of parking on the vehicle access point. They were advised at this point that following the LGO's decision, the Council would not engage in further correspondence on the same issue, and that their comments would be placed on file for reference. It is the Council's view that this request is an attempt to reopen the issue, looking for ways to challenge the validity of the access point itself.
32. The Council considers that, given that this issue has been exhaustively explored previously, to do so again would be futile and a waste of public resources. Furthermore, the Council considers this attempt to reopen the issue demonstrates intransigent behaviour on the part of the complainant, given that the Council previously advised that it would not enter into further correspondence on this particular issue.
33. Regarding the value or serious purpose of the request, the Council considers that this request is motivated primarily by the complainant's own private interests rather than any wider public interest. In addition, the LGO has already determined that there is no indication that the Council has not acted properly in relation to the parking issue.
34. In respect of the public interest test, the Council's view is that the public interest in the disclosure of the information requested is extremely limited. It cited the following factors:
 - "The limited number of people directly affected by the disclosure (it is effectively of relevance solely to [the complainant] and the resident of [the property named in the request])"
 - "Minimal impact on public safety caused by parking on [street name redacted] (contrary to [the complainant's] argument that pedestrians are being placed at risk). It is the professional opinion of qualified highways officers that there is minimal risk posed to pedestrians or emergency services vehicles, given the nature of the road and low volume of traffic."
 - "There is no evidence of heightened risk, or a pattern of relevant incidents in that area. Public crash data highlights that over the past 24 years, there have been four minor incidents at the junction of [name of adjoining road redacted], and none outside the properties in question."

- “There is no implication of wrongdoing associated with the approval of the access point, or the measures the Council has taken to date to ensure the land is being used properly. The LGO declined to investigate further on this basis.”
- “The Council’s resources are currently exceptionally strained, both financially and in terms of officer workload and availability. Continuing to engage in what is effectively a neighbour dispute deprives the broader public of those resources.”

The Commissioner’s decision

35. Given that the complainant is already aware of the Council’s position that permission was granted for the paved vehicle access point in 2022 and that the hard standing was allowed for access only so parking on the vehicle access point is not permitted, the Commissioner’s view is that this request lacks any significant value or serious purpose.
36. The Commissioner agrees with the Council’s assessment that it appears that, rather than genuinely seeking information held by the Council, the complainant is instead attempting to reopen the matter of how the Council has responded to their complaints about parking on the access point.
37. The fact that the LGO has already considered a complaint about the Council’s response to these complaints and determined that there is no indication that the Council has not acted properly is a further factor that characterises this request as vexatious. The Commissioner’s view is that the complainant is demonstrating unreasonable persistence by seeking to re-open the matter even after the LGO has considered the Council’s handling of the parking issue.
38. This is the seventh request made by the complainant for very similar information within a year. The Commissioner’s view is that the collective burden of dealing with the previous requests, combined with the burden imposed by this request, means a tipping point has been reached, rendering this request vexatious.
39. The Commissioner also agrees with the Council’s assessment that it is unlikely that responding to this request would resolve the situation to the complainant’s satisfaction. Rather, it seems likely that requests would continue to be made adding additional burden to that already incurred by the Council.
40. The Commissioner’s view is that the cumulative burden of dealing with this series of related requests represents a disproportionate or unjustified level of disruption, given the very limited value or serious purpose of the request.

41. The Commissioner is therefore satisfied that the exception at regulation 12(4)(b) is engaged.
42. In respect of the public interest test, while the Commissioner acknowledges that in general terms there is a public interest in the disclosure of information that relates to the issue of illegal parking, in the specific circumstances of this case, he considers the public interest in the disclosure of the information requested to be extremely limited. This interest is therefore easily outweighed by the public interest in protecting the Council's limited resources from unreasonable requests.
43. The Commissioner's decision is therefore that the Council is entitled to refuse the request under regulation 12(4)(b).

Right of appeal

44. 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

45. 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.
46. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Victoria James
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