

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

### **Decision notice**

**Date:** 22 August 2024

**Public Authority:** Northumberland County Council

**Address:** County Hall  
Morpeth  
NE61 2EF

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

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1. The complainant has made a request to Northumberland County Council ("the Council") for noise nuisance information regarding a specific festival.
2. The Commissioner's decision is:
  - The Council was entitled to rely on regulation 12(4)(b) when refusing to supply the requested information.
  - The Council failed to comply with its duty under regulation 9(1) to offer advice and assistance to the complainant.
  - The Council breached regulation 11 (reconsideration) of the EIR by failing to provide the complainant with the outcome of its internal review within 40 working days.
3. The Commissioner requires the Council to take the following step to ensure compliance with the legislation.
  - Provide the complainant with advice and assistance to help them to submit a request that does not create a manifestly unreasonable burden.
4. The Council must take this step 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**

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5. On 22 November 2023, the complainant wrote to the Council and requested information in the following terms:

“I would like to request the following – Freedom of information Environmental Health – noise & Nuisance for the following: Shoe shaker festival 01/01/2023 to date.”

6. The Council responded on 18 December 2023, it stated that complying with the request would be manifestly unreasonable due to the time and cost required to provide the requested information. The Council cited regulation 12(4)(b) as its basis for the refusal. This position was maintained by the Council during its internal review.

## **Reasons for decision**

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

7. 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);
8. Although he has not seen the requested information, as it is information relating to noise, the Commissioner believes that the requested information is likely to be information on factors affecting or likely to affect the elements of the environment. For procedural reasons, he has therefore assessed this case under the EIR.

**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.
10. 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 guidance on regulation 12(4)(b)<sup>1</sup>.
11. 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.
12. 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;

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

- 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.
13. 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.
  14. While the Fees Regulations relate specifically to FOIA, the Commissioner considers that they provide a useful point of reference for deciding whether the burden of complying with a request would be manifestly unreasonable. However, the Commissioner will also take into account the size of the public authority and the value of complying with the request.
  15. The Council cited regulation 12(4)(b) on the grounds that to comply with the request would impose a significant and disproportionate burden on its resources.

### **The Council's position**

16. The Council advised that on receipt of this request, all members of the Public Protection Environmental Health team (the team dealing with the noise nuisance complaints and issues) were instructed to search their own individual mailboxes for emails related to the festival. Staff were asked to use specific terms such as "Shoe Shaker" "Shoe Shaker Festival" in relation to the noise nuisance.
17. This search located over 350 emails. It was estimated during the internal review that it would take 2 minutes to read and determine if each email falls within the scope of the request. The Council advised that in addition to reading each email, the Council would also need to determine whether any legal advice would be required, or whether any exception under EIR would need to be applied.
18. In response to the Commissioner's investigation, the Council confirmed that it no longer believed that the estimate of 2 minutes per email would be a sufficient amount of time to read each email and consider if it fell into the scope of the request. Having conducted a further sampling exercise, the Council have advised that it now believes 3 minutes per email would be more appropriate estimate.
19. The Council advised that as part of the Commissioner's investigation, it had conducted a further search using Microsoft eDiscovery for emails (thus removing issues of human error) within the stipulated timeframe: 01/01/2023 – 22/11/2023.

20. The first search it ran was specifically for any emails containing any of the following: "shoe shaker festival", or "shoe shaker", or "shoe shaker noise", or "shoe shaker festival noise", or "shoe shaker festival nuisance".
21. This search brought up 3,644 emails, which at a rate of 3 minutes per email, would take over 182 hours to review. Due to the large number of emails retrieved, the Council conducted a further narrower search. The additional search was done in an attempt to ensure emails related to the festival more generally, whilst ensuring that the noise nuisance would not be removed.
22. The search terms for this search were "shoe shaker noise", or "shoe shaker festival noise", or "shoe shaker festival nuisance". This search resulted in 365 emails being located, which the Council advised would take just over 18 hours review.
23. The Council advised that while the narrower scope meant that fewer emails were located, the search would not have captured any emails from the team dealing with the noise nuisance complaints, where the terms "noise" or "noise nuisance" or "nuisance" were not mentioned. To ensure that all the emails within the scope of the request were located, additional manual searches would likely be required.
24. The Council informed the Commissioner that it previously had already spent 3 hours considering whether to apply the above exceptions. It explained that this involved discussions between the information governance department, public protection department and legal services, to determine whether the exceptions applied, whilst also conserving the current position regarding the festival, as public protection had actively been involved with the festival and had been considering appropriate action.
25. The Council confirmed that during its review, it had considered applying regulations 12(5)(b), 12(4)(e) and 12(4)(b) to the information it had identified. Once the Council had determined that regulation 12(4)(b) applied to the request, it ceased its consideration of the remaining exceptions.
26. The Council advised that if it was required to disclose the requested information, it would likely require a further 3 hours to complete its considerations of regulations 12(5)(b) and 12(4)(e).
27. These considerations would include seeking further legal advice to determine whether it was able to withhold the requested information under these exceptions. If the Council was advised that the further

exceptions did apply, it would also need to spend time to apply these exceptions to the applicable information.

28. The Council concluded that complying with the request would take over 24 hours. It advised that the estimate was conservative and it may be much higher.
29. The Commissioner acknowledges that whilst internal emails are likely to refer to "noise nuisance" because it has a statutory meaning, emails from members of the public may use a range of different phrases to describe the same thing such as, "loud music", "music during late hours", "unwelcome sound" or even simply referring to a "disturbance". Because there would be so many different variations, the Council could not be sure it had identified all relevant correspondence without carrying out the very broad search and filtering the results.
30. On that basis, the Commissioner is satisfied that complying with the request would create a manifestly unreasonable burden.

### **Public interest test**

31. Regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions.
32. The Council recognised that disclosure would demonstrate that it was operating in a transparent and accountable manner. However, it stated that it would not be in the public interest to such a significant proportion of its finite resources to trawl through emails related to the Shoe Shaker Festival, as well as the additional work required to review the attachments to those emails and seek the appropriate legal advice in relation to exemptions 12(4)(e) and 12(5)(b).
33. It added that to spend this level of resource would be disproportionate and an unreasonable burden to place upon the Council. It would also divert resources away from vital services across the authority, as well as the Council's ability to respond to other FOI requests within a timely manner. It concluded that the request would expose the Council to a disproportionate and unreasonable burden if it was required to undertake the work required to provide the requested information.
34. The Commissioner recognises that there is a value to the requested information, but that value is likely to be reduced considerably by the large amount of irrelevant information that the Council will have to search through to identify that which is within scope. Even once it has identified all the information within scope, the Commissioner is sceptical that the overall value of what the Council would ultimately disclose would justify such a diversion of resources.

35. Whilst the Commissioner has been informed by the presumption in favour of disclosure, he is satisfied that, for the reasons given above, the exception has been applied correctly.

## **Procedural matters**

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### **Regulation 9 – advice and assistance**

36. Regulation 9(1) requires a public authority to consider what advice and assistance it can reasonably provide to an applicant in cases where it relies on regulation 12(4)(b) of the EIR on the basis of burden. Even if this is simply to confirm to the complainant in a given case that no reasonable or practicable advice and assistance can be provided.
37. Whilst the Commissioner acknowledges that the Council offered to meet with the complainant to reframe the request, the Commissioner has seen no evidence of advice and assistance actually being provided.
38. What the Council has offered may well be of interest to the complainant (and the Commissioner recognises that this was probably done in good faith), but offering unspecified further information in the future is not a substitute for providing advice and assistance at the point a request is refused.
39. The Commissioner therefore requires the Council to contact the complainant and provide advice and assistance as to how their request can be refined or focused so that it does not create an unreasonable burden.

### **Regulation 11 – reconsideration (internal review)**

40. Regulation 11 of the EIR states that
  - “(3) The public authority shall on receipt of the representations and free of charge—
    - (a) consider them and any supporting evidence produced by the applicant; and
    - (b) decide if it has complied with the requirement.
  - (4) 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.”
41. In this case, the complainant requested an internal review on 18 December 2023 and the Council did not provide the outcome of its

internal review until 20 February 2024. The Commissioner therefore finds that the Council has breached regulation 11 of the EIR by failing to carry out an internal review within the statutory time limit of 40 working days.



## **Right of appeal**

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

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

**Roger Cawthorne**  
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