

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 9 September 2024

Public Authority: Shropshire Council

Address: Shirehall
Abbey Foregate
Shrewsbury
SY2 6ND

Decision (including any steps ordered)

1. The complainant has requested information regarding the Shrewsbury North West relief road plan from Shropshire County Council ('the Council').
2. The Commissioner's decision is that the Council was not entitled to rely on regulation 12(4)(b) for this request.
3. The Commissioner also finds that the Council breached regulation 5(2) by failing to respond within 20 working days. The Council has also breached regulation 9(1) by failing to provide advice and assistance, or confirming why it is unable to do so.
4. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Either disclose the requested information or provide an appropriate refusal notice which does not rely on regulation 12(4)(b).
5. 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

6. On 14 February 2024, the complainant wrote to the Council and requested information in the following terms:

“In connection with the Shrewsbury North West Relief Road please supply copies of emails sent or received by Assistant Director of Economy and Place - Tracy Darke, and emails sent or received by Planning Case Officer for NWRR - Mike Davies, between 1st September 2023 and 31st October 2023.”
7. The Council responded on 5 April 2024. It stated that where the requested information pertains to environmental information, it was exempt under the exception of regulation 12(4)(b). Where the information pertained to non-environmental information, the information was being refused under section 14(1). This position was maintained by the Council in its internal review.

Reasons for decision

Is the requested information environmental?

8. 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);
9. Although he has not seen the requested information, but as it is information relating to Shrewsbury North West relief road, the Commissioner believes that the requested information is likely to be information on measures, factors and the state of the elements of the environment. For procedural reasons, he has therefore assessed this case under the EIR.

Regulation 12(4)(b) – manifestly unreasonable

10. 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 the request for information is manifestly unreasonable”.
11. The EIR do not offer a definition of what is considered manifestly unreasonable. Guidance published by the Commissioner explains that:
- “In assessing whether the cost or burden of dealing with a request is “too great”, public authorities will need to consider the proportionality of the burden or costs involved and decide whether they are clearly or obviously unreasonable” and;
- “In assessing whether the cost, or the amount of staff time involved in responding to a request, is sufficient to render a request manifestly unreasonable the FOIA fees regulations may be a useful starting point.”¹
12. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the “appropriate limit”

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

as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Fees Regulations").

13. The appropriate limit is set in the Regulations at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities, including the Council.
14. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours in respect of the £450 threshold.
15. Where a public authority claims that regulation 12(4)(b) is engaged it should, where possible, provide advice and assistance to help the requester refine their request so that it is not manifestly unreasonable.

The Council's position

16. The Council advised the Commissioner that the planning application surrounding this request is a very high profile matter and has generated a lot of correspondence.
17. The Council informed the Commissioner that it had completed searches on the two named individuals' inbox accounts. It advised that the search terms used were "North West Relief Road", "NWRR" and "21/00924/EIA".
18. The Council confirmed that the searches undertaken initially resulted in 5,164 emails being located, adding that this sum did not include any attachments included in the emails.
19. The Council advised that, even with a conservative estimate of two minutes to review each email and any attachments, the total time required for this request would be 172 hours.
20. The Council confirmed that not only would it be required to spend 172 hours reviewing all the emails and their attachments, it would also need to collate the information into a central location, identify whether information falls into the scope of the request and consider whether any of the information is exempt from disclosure.

The complainant's position

21. The complainant advised that they did not consider the request to be vexatious in nature. They added that the request would help better understand the roles members of staff had in the promotion and determination of the North West Relief Road.

The Commissioner's Position

22. During the Commissioner's investigation, the Council advised that one search conducted had failed to consider the time period of the request. Due to this, a further search was undertaken and it was revealed that the previous estimate of 5,164 emails requiring review, was now in fact only 511.
23. The Commissioner has considered the same estimate provided by the Council of 2 minutes per email and notes that complying with the request would now only take an estimated 17 hours.
24. As the current estimate stands at 17 hours, the Commissioner does not consider that the appropriate cost/time limit would be exceeded by complying with this request. He has therefore determined that the Council was not entitled to rely on regulation 12(4)(b).
25. In the circumstances of this case, the Commissioner considers that, as the exception relied upon by the Council doesn't apply, he is not required to consider the public interest test.

Procedural matters

26. 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 that no reasonable or practicable advice and assistance can be provided.
27. The Commissioner has seen no evidence that advice and assistance was provided by the Council during the request. The Commissioner is therefore satisfied that the Council did not meet its obligation under regulation 9 of the EIR.
28. Regulation 5(2) of the EIR requires a public authority to respond to information requests within 20 working days of receipt. The Council failed to do that in this case and so the Commissioner has recorded a breach.

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.

Michael Lea
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