

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 23 September 2024

Public Authority: Planning Inspectorate
Address: Temple Quay House
The Square
Bristol
BS1 6PN

Decision (including any steps ordered)

1. The complainant has requested information about 'screening direction requests'. The Planning Inspectorate ("PI") originally refused the request under section 12 (cost of compliance) of the Freedom of Information Act 2000 ("FOIA"), but later confirmed to the Commissioner that it should have done so under regulation 12(4)(b) (manifestly unreasonable requests) of the Environmental Information Regulations 2004 ("EIR").
2. The Commissioner's decision is that the PI was entitled to rely on regulation 12(4)(b) of the EIR when refusing to supply the requested information, and has otherwise complied with its duty under regulation 9(1) of the EIR to offer advice and assistance to the complainant.
3. The Commissioner does not require the PI to take any further action.

Request and response

4. On 22 February 2024 the complainant wrote to the PI and requested information in the following terms:

"Disclosure by PINS of all EIA Screening Direction requests made to DHLUHC (and predecessors) via PINS/PCU for s55 development

(whether PDR or express consent) under 1990 TCPA, as amended.

I would like to see PINS records of all Directions requested since 1988 (i.e. start of EIA TCPA regime) whether validated (aka accepted) as valid by PINS or not. Further I would like to see details of all decision on all Direction requests submitted with indication of whether EIA Screening Direction issued was positive or negative. If any Direction requests were determined to be invalid or not processed or some reason, I would like to see details of these decision too.”

5. The PI responded on 11 March 2024. It stated that the request was refused under section 12 (cost of compliance) of FOIA.
6. Following an internal review the PI wrote to the complainant on 3 April 2024. It maintained its position.

Reasons for decision

Is the requested information environmental?

7. During the course of investigation, the Commissioner identified that the information was likely to be environmental information as defined by regulation 2(1) of the EIR. As such, the PI should have applied the terms of the EIR, and not the FOIA, to the request. Specifically, the PI should have cited regulation 12(4)(b) of the EIR – which is the relevant exception that the EIR provides for when a public authority believes that the cost of compliance with a request would be too great.
8. The complainant and the PI agreed that the investigation should proceed on that basis.

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

9. Regulation 12(4)(b) 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;”

10. 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.
11. In this case, the PI considers that circumstance 2) is applicable.
12. The EIR do not provide a definition of what is manifestly unreasonable in terms of cost. This is in contrast to section 12 of the Freedom of Information Act 2000 ("FOIA"), under which a public authority can refuse to comply with a request if it estimates that the cost of compliance would exceed the "appropriate limit".
13. However, the FOIA "appropriate limit" can be a useful starting point in considering whether a request for environmental information can be refused as being manifestly unreasonable.
14. The FOIA appropriate limit is defined in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations"). These define the appropriate limit in terms of the amount of time which staff would be expected to take in complying with a request.
15. The Fees Regulations state that the relevant activities, set out below, may be calculated/charged for at a flat rate of £25 per hour of staff time. For the PI, the appropriate limit under the Fees Regulations would be £600; that is, 24 hours of staff time.
16. Under FOIA, a public authority is only allowed to include the cost of certain activities in its estimate: determining whether the information is held; locating the information or a document which may contain the information; retrieving the information or a document which may contain the information; and extracting the information.
17. However, since the Fees Regulations do not apply to the EIR, a public authority may take into account other activities and wider considerations in terms of what may render a request for environmental information "manifestly unreasonable". It is also the case, however, that a public

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/regulation-12-4-b-environmental-information-regulations-manifestly-unreasonable-requests/>

authority is expected to accept a greater burden when considering requests for environmental information.

18. When considering whether a costs estimate under either FOIA or the EIR, the Commissioner expects any estimate to be realistic, sensible and supported by cogent evidence. He also expects that, where possible, a sampling exercise will have been carried out.

What information has been requested?

19. The PI has informed the Commissioner that the request relates to 'screening directions', and has explained what these are, and why they are undertaken:

"Under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, the Secretary of State has duties under certain circumstances to identify if a proposed development requires an environmental impact assessment before that application or appeal can be determined. A third party can also request that the Secretary of State undertakes this process.

For all planning casework determined by the Planning Inspectorate, case officers check to see if that case qualifies as a type of development listed in the EIA Regulations (as described in Schedule 2 of the EIA regulations) which might require EIA. Where these cases are identified by a case officer or an inspector, they are referred to the Inspectorate's Environmental Services Team who act on behalf of the Secretary of State to screen the proposed development. This involves working through the selection criteria in Schedule 3 of the EIA regulations to produce a matrix which records the evidence against the selection criteria. Once this has been completed, a Screening Direction (which is the subject of the request) may be produced. This will state if the Secretary of State considers that an EIA is required (a positive Screening Direction) or if it is not (a negative Screening Direction). [...] However, a Screening Direction is not issued for every case which the Environmental Services Team screens. If a local authority has already issued a screening opinion which reaches the same conclusions as the Environmental Services Team screening then no Screening Direction is issued. In addition, some of the cases forwarded to be screened do not qualify as eligible development under Schedule 2 of the EIA Regulations."

Is regulation 12(4)(b) engaged?

20. The PI has explained the following to the Commissioner:

- The information is not already held in the form of a list, as believed by the complainant. Whilst it does maintain a 'screening tracker' (since January 2018, in the form of a Microsoft Excel spreadsheet), this only lists the cases that have come to the PI, and whether they have been completed. It does not include whether a screening direction was issued.
 - To collate the information, the PI would instead need to open each case on its internal management system and review the contents to determine if a screening was undertaken.
 - However, for cases completed between January 2018 and December 2020, most records have been deleted in line with the PI's records retention policy, so instead, the PI would need to check the relevant local planning authority website, as it would be that authority which would be responsible for publishing any screening directions issued in relation to an appeal or application dealt with by the PI.
 - In respect of screening directions issued prior to January 2018, the PI does not have any record of these, and there is no feasible way for it to collate the information.
 - For situations where a screening direction has been requested from the Secretary of State but which does not relate to an appeal or application case being dealt with by the PI, the work is instead carried out by the Planning Casework Unit, which is part of the Ministry of Housing, Communities and Local Government, and not the PI. As such, the PI will not hold those records.
21. To illustrate the cost of retrieving the information that it does hold, or otherwise have access to, the PI has explained the following to the Commissioner:
- To collate the information for December 2020 to present (for which records have not been deleted in line with the PI's records retention policy), the PI would to check the case reference listed in the screening tracker, open up the relevant case in the case management system, and check the contents to see if a screening direction had been produced. If it has, it would need to be downloaded.
 - The PI estimates that this action would take approximately 2 minutes per case.
 - For 2021 the number of cases to be checked is 932 (which equates to 31.2 hours of officer time); for 2022 the number of cases to be checked is 1366 (which equates to 45.5 hours of

officer time); for 2023 the number of cases to be checked is 1065 (which equates to 35.5 hours of officer time).

- The above does not include the cost of collating the information prior to December 2020, for which the PI would need to check local planning authority websites.
22. The Commissioner has considered the PI's position. He notes that the PI has assumed that it would need to access the records held by local planning authorities; however, the Commissioner perceives that this information is not held by the PI, and that the PI is not obligated to access it in order to respond to an information request.
 23. However, and notwithstanding this, it is evident to the Commissioner that even searching for the information that the PI does hold (for December 2020 to the date of the request) would take over 112 hours of officer time.
 24. The Commissioner is satisfied that compliance with the request would require a significant amount of officer time, far in excess of the appropriate limit set for FOIA. The Commissioner is therefore satisfied that compliance with the request would be manifestly unreasonable, and that the PI is entitled to rely upon regulation 12(4)(b) to refuse it.
 25. When considering whether the public interest favours maintaining the exception or actioning the request, the Commissioner has taken into account that there is an inherent public interest in openness and transparency by the PI, particularly in regards how to discharge its functions under planning legislation.
 26. However, the Commissioner recognises that the purpose of the exception is to protect finite public resources from being unnecessarily consumed. In the circumstances of this case, compliance with the request, to the extent that the PI is able, would consume significant public resources. The Commissioner also considers that the public interest in openness and transparency is met by the planning process itself, as part of which screening directions are published by local planning authorities.
 27. Having considered the public interest arguments, the Commissioner finds the public interest in protecting public resources to be the stronger argument.
 28. 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. As stated in the Upper Tribunal decision *Vesco v Information Commissioner (SGIA/44/2019)*: "If application of the first two stages has not resulted in disclosure, a public authority should go

on to consider the presumption in favour of disclosure..." and "the presumption serves two purposes: (1) to provide the default position in the event that the interests are equally balanced and (2) to inform any decision that may be taken under the regulations" (paragraph 19).

29. As covered above, in this case the Commissioner's view is that the balance of the public interests favours the maintenance of the exception, rather than being equally balanced. This means that the Commissioner's decision, whilst informed by the presumption provided for in regulation 12(2), is that the exception provided by regulation 12(4)(b) was applied correctly.

Procedural matters

Regulation 9 – advice and assistance

30. 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 cost. 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.
31. In this case, the PI has explained that it has provided wider contextual information to the complaint to allow them to understand the limitations on those records held by the PI, and why a screening direction is not issued for every case which the PI screens. The PI has also directed the complainant to the Planning Casework Unit in respect of the records held by that office, and explained how screening directions are published on local planning authority websites.
32. The Commissioner notes that, even undertaking searches for one calendar year, this would exceed the appropriate limit set for FOIA. In such a context the Commissioner recognises that it is not therefore possible to reduce the scope of the request to a certain year. As such, the Commissioner is satisfied that the PI has provided that advice and assistance as is reasonable in the circumstances and has therefore complied with regulation 9 of the EIR.

Right of appeal

33. 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

34. 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.
35. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Daniel Perry
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF