

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

### **Decision notice**

**Date:** 11 October 2024

**Public Authority:** Bristol City Council  
**Address:** City Hall  
PO Box 3399  
Bristol  
BS1 9NE

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

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1. The complainant requested information from Bristol City Council ("the Council") relating to East Bristol Liveable Neighbourhood.
2. The Commissioner's decision is that the Council is entitled to rely on regulation 12(4)(b) (manifestly unreasonable) of the EIR to refuse to comply with the request. He also finds that the Council complied with its obligations under regulation 9 of the EIR to offer advice and assistance.
3. However, the Commissioner finds that 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.
4. The Commissioner does not require the Council to take any steps.

#### **Request and response**

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5. On 31 January 2024, the complainant wrote to Bristol City Council and requested information in the following terms:  
  
"I asked a two part question at Full Council meeting 12/12/23 (PQ21) which did not get a satisfactory answer. I'd like to request the information I asked for under FOI. Regarding East Bristol Liveable Neighbourhood:

1. Regarding EBLN; Please will you provide me with all documentation relating to consultation with stakeholders, emergency services any other relevant organisations?
2. Please will you advise which external organisations have been involved in the planning & design of EBLN?"
6. The Council responded on 29 February 2024 and provided the complainant with information in response to the request. On 21 March 2024 the complainant requested an internal review.
7. The Council provided the complainant with the outcome of its internal review on 21 June 2024. It revised its position stating that it was relying on regulation 12(4)(b) (manifestly unreasonable) of the EIR to refuse to comply with the request.

## Reasons for decision

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### Regulation 12(4)(b) – manifestly unreasonable

8. This reasoning covers whether the Council is entitled to rely on regulation 12(4)(b) of the EIR to refuse to comply with the request.
9. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable. In this case, the Council is citing 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.
10. 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.
11. 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.
12. 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.
  13. 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. The Council must then balance the cost calculated to respond to the request against the public value of the information which would be disclosed before concluding whether the exception is applicable.

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

14. In its internal review response and submissions to the Commissioner, the Council explained that information within the scope of part 1 of the request would be held in the email accounts of its Liveable Neighbourhoods team, Transport Engagement team and the email accounts Council Officers, and in its SharePoint filing system.
15. The Council explained that it has searched the email account of its Liveable Neighbourhoods team for all emails relating to EBLN. This search identified 947 emails that may fall within the scope of part 1 of the request. It estimates that it would take approximately 2 minutes to review each email and extract any information that falls within the scope of the request. Therefore, it calculated that in total it would take roughly 31 hours to review all 947 emails (947 emails x 2 minutes = 31 hours).
16. The Council stated that there are 2057 files held within the EBLN Communications and Engagement Materials SharePoint folder. It explained that in order to provide the information requested in part 1 of the request it would need to review these files to determine whether they contain any information within the scope of the request. The Council estimates that it would take approximately 2 minutes to review each file and so in total, it calculated that it would take 68 hours to review all 2057 files (2057 files x 2 minutes = 68 hours).
17. The Council explained that it would also need to search the email accounts of certain Council Officers who are likely to hold information within the scope of part 1 of the request. This would further add to the amount of time it would take to comply with the request. Therefore, it considers the request to be manifestly unreasonable.

## **The Commissioner's position**

18. The Commissioner notes that the Council has conducted a search of the email account of its Liveable Neighbourhoods team and has located 947 emails relating to EBLN. However, the Commissioner is not convinced that it would be necessary for the Council to review all of these emails in order to provide the information requested in part 1 of the request as the part 1 of the request is limited to information relating to the consultation of stakeholders and emergency services with regards to the EBLN. He considers that the Council could reduce the number of emails that would need to be reviewed by using search terms relevant to part 1 the request when searching the email account of its Liveable Neighbourhoods team.
19. However, the Commissioner accepts that it would be necessary for the Council to review the 2057 files held in its EBLN Communications and Engagement Material SharePoint folder in order to provide the information requested in part 1 of the request. He considers the Council's estimate of 2 minutes to review each file within that folder and determine whether it falls within the scope of part 1 of the request to be reasonable.
20. Furthermore, the Commissioner notes that in order to provide the information requested in part 1 of the request the Council would also need to search the email accounts of certain Council Officers. These searches would take the cost of complying with the request further over the appropriate limit.
21. Therefore, the Commissioner considers that complying with the request would place a disproportionate burden on the Council, both in terms of cost and resources. He is satisfied that the request is manifestly unreasonable and so regulation 12(4)(b) is engaged. The Commissioner will now go on to the consider the public interest test.

## **Public interest test**

22. With regards to the public interest test, in its internal review response the Council acknowledged that there is a public interest in transparency and in understanding how it consulted stakeholders in the establishment of the EBLN initiative. However, the Council also stated that complying with the request would place a significant burden on its resources and would prevent Council staff from delivering other services.
23. The Commissioner acknowledges that there is a public interest in the transparency of the Council and in the EBLN consultation process. However, he considers that complying with the request would place a significant burden on the Council's limited resources. In the

Commissioner's view that burden would be disproportionate and not in the public interest.

24. The Commissioner's conclusion is that the public interest in the maintenance of the exception provided by regulation 12(4)(b) outweighs the public interest in disclosure of the withheld information.
25. 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).

26. As covered above, in this case the Commissioner's view is that the balance of the public interest 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. Therefore, the Council is not required to provide the requested information.

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

27. Regulation 9(1) of the EIR says that a public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.
28. In its internal review response, the Council stated that it was unable to advise the complainant on how to reduce the scope of part 1 of the request due to the large amount of information requested. However, it advised the complainant that they could refine the scope of the request by limiting it to the information requested in part 2 of the request.
29. In this case, the Commissioner has been unable to identify any advice and assistance which could have been provided by the Council that would have assisted the complainant in refining part 1 of the request so that it falls within the appropriate limit. Therefore, he considers the Council's response to be appropriate in the circumstances and so his decision is that the Council met its obligations under regulation 9(1) of the EIR.

## Procedural matters

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### Regulation 11 – reconsideration (internal review)

30. 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.”

31. In this case, the complainant requested an internal review on 21 March 2024 and the Council did not provide the outcome of its internal review until 21 June 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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32. 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)

33. 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.
34. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Ben Tomes**  
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