

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 25 October 2024

Public Authority: Flintshire County Council
Address: County Hall
Mold
Flintshire
CH7 6NB

Decision (including any steps ordered)

1. The complainant has requested information relating to street lighting. Flintshire County Council (the council) refused the request under regulation 12(4)(b) of the EIR as manifestly unreasonable.
2. The Commissioner's decision is that regulation 12(4)(b) is not engaged.
3. The Commissioner requires the council to take the following steps to ensure compliance with the legislation:
 - Issue a fresh response to the complainant in accordance with the EIR, without relying on regulation 12(4)(b) of the EIR
4. 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

5. On 25 January 2024, the complainant made a request to the council for information relating to street lighting. A copy of the request is included at annex one of this decision notice.

6. The council responded on 23 April 2024 and refused the request under regulation 12(4)(b) of the EIR as it considered the request to be vexatious in nature.
7. The complainant wrote to the council on 23 April 2024 requesting it carry out an internal review of its decision.
8. The council provided the outcome of its internal review on 30 April 2024, maintaining its original position.

Scope of the case

9. The complainant contacted the Commissioner on 6 May 2024 to complain about the way their request for information had been handled.
10. The Commissioner considers the scope of his investigation is to consider whether the council is entitled to rely on regulation 12(4)(b) of the EIR as a basis for refusing the request.

Reasons for decision

Is the requested information “environmental information”?

11. 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);
12. The Commissioner has not seen the requested information. However, as it is information relating to light, he is satisfied that the requested information is likely to relate to factors affecting or likely to affect the elements of the environment. He is therefore satisfied that this request falls under the EIR.

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

13. Under Regulation 12(4)(b), a public authority can refuse to disclose environmental information if the request for that information is manifestly unreasonable. A request may be manifestly unreasonable either because of the excessive burden it would require in order to comply with it, or because the request is vexatious.

Is the request manifestly unreasonable?

14. The Commissioner's guidance on manifestly unreasonable requests¹ makes clear that the test for a vexatious request under the EIR is essentially the same as that under FOIA. The ICO's guidance on section 14(1) defines 'vexatious' as the:

“...manifestly unjustified, inappropriate or improper use of a formal procedure.” (paragraph 27 of the Upper Tribunal's decision in *Dransfield*).²

15. This clearly establishes that the concepts of “proportionality” and “justification” are central to any consideration of whether a request is vexatious. In essence, does the wider value of the information being

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/#howdowe>

² [Dransfield & Anor v The Information Commissioner & Anor \[2015\] EWCA Civ 454 \(14 May 2015\) \(bailii.org\)](#)

disclosed outweigh the burden created, or the vexatious factors associated with the request?

16. The Upper Tribunal in the Dransfield case suggested four broad themes which might indicate that a request is vexatious:
 - the burden (on the public authority and its staff);
 - the motive (of the requester);
 - the value or serious purpose (of the request); and
 - any harassment or distress (of and to staff).
17. A useful starting point is to assess the value or purpose of the request, before looking at the impact that dealing with the request would have on a public authority.
18. When considering this, the Upper Tribunal in Dransfield asked itself, "Does the request have a value or serious purpose in terms of there being an objective public interest in the information sought?" The public interest can encompass a wide range of values and principles relating to what is in the best interests of society, including, but not limited to:
 - holding public authorities to account for their performance;
 - understanding their decisions;
 - transparency; and
 - ensuring justice.
19. The council has provided the Commissioner with a full history of the level of engagement with the complainant and evidence of the negative impact on its staff. The council has argued that its staff have been subject to a high number of emails which it considers to be abusive, and which have impacted on their health and wellbeing. The council has stated that its staff have been addressed as 'public servants', referred to the Nolan principles and made to feel under attack for the performance of their duties.
20. The council has argued that the subject matter of the EIR request has already been investigated in full, via the council's complaints process and the Public Services Ombudsman for Wales. The council has argued that throughout that process, the complainant's questions were answered in full and that it has provided the complainant with all the relevant documents to assist them in understanding the case.

21. From the information provided to the Commissioner, it is clear that the complainant still believes that the council has acted incorrectly when installing a streetlight close to their house. It appears that the complainant is continuing to seek information to help them understand the decision to install the street light, and to confirm whether the council has followed required processes and procedures when doing so. It appears to the Commissioner that the complainant is seeking information that, they do not believe has been previously provided. The Commissioner therefore accepts there is a serious purpose or value to their request.
22. The council has argued that the complainant's EIR request "is a rehearsal" of the complaint, and it considers that it is manifestly unreasonable to ask staff to repeat the work when subject to what it considers to be hostile and abusive language.
23. The council has provided the Commissioner with screenshots of staff members' email inboxes as evidence of the number of emails the council has received from the complainant, which included:
 - Two emails sent between 27 and 30 November 2020;
 - 26 emails sent between 26 October and 17 November 2023;
 - Seven emails sent between 21 November and 5 December 2023; and
 - 11 emails sent between 13 January 21 March 2024.
24. The council has also provided the Commissioner with a copy of an email it sent to the complainant after receiving this request, advising the complainant of their single point of contact to manage the "numerous emails and various officers involved".
25. Whilst the Commissioner accepts that the complainant sent a large number of emails to the council in the lead up to this request for information, he has not been provided with the contents of those emails.
26. In addition, the council has provided the Commissioner with screenshots of staff members' sent items folders to evidence the number of emails the council has sent to the complainant, which included:
 - Five sent between 28 February and 1 March 2022, and
 - 17 sent between 27 October 2023 and 5 May 2024.
27. Whilst the Commissioner accepts that the council has provided evidence that it has been responding to the complainant's emails, he has again

not been provided with the contents of those emails and therefore has not seen any evidence that the council has previously provided the complainant with the specific information requested in this case.

28. In addition, without seeing the contents of the emails that the complainant has sent to the council, he has not seen sufficient evidence that the council's staff have been subjected to hostile and abusive language from the complainant.
29. The Commissioner also notes that whilst the language the council has asserted the complainant has used in their emails (as described in paragraph 19 of this decision notice) suggests that it may have been challenging to deal with the complainant at times, he would not consider it to go beyond the level of challenge or scrutiny that public sector workers would expect to sometimes face in their roles. Without more evidence to show that the content of the emails sent by the complainant went beyond this, the Commissioner cannot find that the complainant's communications were vexatious in nature.
30. Similarly, whilst he acknowledges that the complainant has sent numerous emails to the council on this subject since 2020, the volume of emails is not sufficient, in the Commissioner's view, to be vexatious in and of itself.
31. On review of the council's submissions, the Commissioner has not been convinced that there has been sufficient distress, disruption or irritation caused by the request to override its value and purpose.
32. The Commissioner therefore finds that regulation 12(4)(b) of the EIR is not engaged in relation to the request.

Procedural matters

33. 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

34. 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

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

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex one – The request for information

On 25 January 2024, the complainant made the following request for information to the council:

“Under Freedom of Information Act/Environmental Information Regulations, I would like to request the following information:

Confirmation of the *authority* and *statutory duty* of this council to install street lights.

Confirmation of statutory duty to maintain street lights as safe, sustainable and fully functioning with due diligence thereby fulfilling the council's commitment of energy efficiency and carbon reduction savings.

A copy of Flintshire County Council's specifications and standards for illuminated equipment notably street lighting, the criteria for street light provision and the requirement for minimisation of excessive lighting in a single location that is causing harm, nuisance and environmental and biodiversity decline.

A copy of your full street lighting policy - not the draft one;

<https://www.flintshire.gov.uk/en/Resident/Streetscene/Draft-Street-Lighting-Policy.aspx>

Confirmation and clarification of how excessive lighting that is on for 22 hours (the main [road name redacted] ones are on for 16 hours per day) aligns and complies with 'part night street lighting, providing energy efficiencies and carbon reduction savings' in line with your draft policy above.

Demonstration of due diligence and consideration of efficient lamp and luminaire selection for [road name redacted] residential cul de sac outside my property and for the new lighting scheme installed by Redrow on [road name redacted] (specifically the luminaire directly in front centre of my property).

How has the following government guidance been adhered to:

<https://www.gov.uk/guidance/light-pollution#how-much-light-shines>

Does the [road name redacted] street light design (as installed in October 2023) adhere to BS 5489 - 1:2020 and code of practice?

How is the luminaire fitted into the old lighting column bordering my property at [address redacted] in line with this council's following commitment:

The street lighting service has made a commitment to reduce its carbon footprint through a range of measures, which has included installing energy saving equipment and low energy lighting units for all replacements

Confirmation (in writing with certification) of safety compliance of a luminaire that does not support a shade due to the age and structure of the lighting column and a luminaire that does not support a sensor and whose timer is defunct.

A copy of your customer care policy and why the email logging this urgent matter to the Lighting Manager has been unanswered and why has the aggrieved not received a call from the lighting manager within the 10 day timeframe (after one email 10 days ago, 2 calls and 1 email to Streetscene - all recorded)?. Is this in line with your service and customer care policy? and in line with receiving 'consistently excellent standards of customer service'.

Confirmation that Flintshire County Council owns the street light in the cul de sac bordering [address redacted] (not Penyffordd Village Council as I was informed in December 2023).

Evidence of full safety regulation compliance and due diligence for the installation of an excessively bright luminaire that is causing distress, harm, loss and injury to the homeowner and children, and severely impacting wildlife and biodiversity in the area.

Why has no action been taken to resolve this for the aggrieved resident (10th day of complaint submission today) and the statutory duty not complied with thus far to maintain the light and address the urgent problem of light pollution causing harm to human health, wildlife and the environment.

Copy of planning, approval and due diligence of the street light scheme installation by Redrow along [road name redacted] in October 2023.

Full disclosure as to why these street lights are located in their specific locations at different distances apart and the requirement for this.

Has this council complied with safety regulations and code of practice as per BS 5489-1:2020-D with regards to the street

lighting scheme as installed by Redrow on [road name redacted] and separately on the residential [road name redacted] cul de sac? Does the street lighting scheme on [road name redacted] installed by Redrow comply with the aforementioned regulations and code of practice?

Does the recently installed luminaire in the old lighting column outside my home that is causing light pollution and constituting a health and safety hazard and a nuisance as referenced above comply with the aforementioned safety regulations and code of practice.

Impact assessment of the light scheme installed by Redrow (particularly the one directly outside [address redacted]) on wildlife and biodiversity - of key significance is the protected hedgerow running along the length of [road name redacted] (bird nesting location).

Sustainability, environmental health and ecological impact assessment of the lights installed by Redrow on [road name redacted] in October 2023

Sustainability impact assessment of excessive and unsustainable street lighting (in a dead end cul de sac).

Safety, sustainability and health impact assessment of a new Led luminaire in an old lighting column that has cracked casing and tape on it, no sensor and a defunct timer and no capacity to house a shade.

The specific reason and evidence for this for the requirement for 2 street lights to be directly adjacent to one another directly in front of a property causing light pollution and excessive light intrusion and the impact assessment thereof.

Has light intrusion been assessed and tested for? - where the light shines, when the light shines, how much the light shines and possible ecological impacts; on the street light outside [address redacted] in the cul de sac and with the light directly and centre to my property as installed by Redrow in October 2023.

Has due diligence been done by this council in considering the character of the area and surrounding environment and wildlife and to demonstrate supporting evidence of this and of the appropriateness of this level and duration of lighting and its impact.

Confirmation of who owns the lights (as installed by Redrow on the main [road name redacted] directly outside my home) and who is responsible for the maintenance of them? - If Redrow own these lights and they cannot be maintained by Flintshire Council until 'ownership is transferred' how is this in line with your street lighting policy and statutory duty?

Confirmation of the exact dates of the 30 day time period where this council's detailed financial accounts are available to the public for 30 days and provision to me of these within this request:

<https://www.gov.uk/understand-how-your-council-works/spending-and-accounts>

Are all employees of Flintshire County Council public servants and is every employee therefore duty bound by the Nolan Principles in public office? Notably of transparency, honesty and accountability.

I would like you to provide this information by email with the requested impact assessments, regulatory and compliance documentation in PDF form if possible."