

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 30 October 2024

Public Authority: Cheshire West and Chester Council
Address: 58 Nicholas Street
Chester
CH1 2NP

Decision (including any steps ordered)

1. The complainant requested information from Cheshire West and Chester Council ("the Council") regarding road closures. The Council has refused the request under regulation 12(4)(b) of the EIR (manifestly unreasonable) on the grounds that to comply with the request would incur unreasonable costs.
2. The Commissioner's decision is that the Council has failed to demonstrate that the exception at regulation 12(4)(b) is engaged.
3. The Commissioner requires the Council to take the following step to ensure compliance with the legislation.
 - Issue a fresh response that does not rely on regulation 12(4)(b).
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

5. On 21 March 2024, the complainant wrote to the Council and requested information in the following terms:

"In respect of the wards of Little Neston, Neston and Parkgate a list of the total road closures (i.e. where the road is totally closed requiring a diversion) and partial road closures (i.e. where traffic

lights or other devices restricting the flow of traffic have been installed) either undertaken by Cheshire West & Chester Council or authorised by the said Council in the case of those undertaken by statutory undertakers or others for the years of 2021, 2022 and 2023, and the period from 1st January 2024 to the date of this request.

The location of the total or partial closure should be disclosed and the identity of any statutory undertaker should be disclosed.

The period of time taken by each of the total or partial closure is to be disclosed. The length of any diversionary route should be disclosed [sic]."

6. The Council responded on 8 April 2024. It disclosed quite a large quantity of information, which it stated included the information requested. The Council explained its reason for this approach, stating the following:

"As particular streets have not been defined, to narrow down to the information requested will take the team over 18 hours which is the statutory allotted time and [sic] authority can spend on a Freedom of Information request. We have provided all of the information for all streets in the areas you have enquired about and you can filter the information that you require yourself from the attached spreadsheets"

7. The complainant requested an internal review on 12 April 2024. They stated, "I ask for a review of the manner in which my request has been answered. Simply supplying spreadsheets is unacceptable and obstructive. It would take 14953 pages to copy them. There are 52 columns. The important ones are half an inch wide with text crammed in. It is your duty to supply material in a way that is intelligible and manageable. You have failed to do so."
8. Following an internal review the Council wrote to the complainant on 23 April 2024. It maintained its original position that it had complied with the request in accordance with the EIR. Specifically, it stated, "the Council can provide you with raw data and guidance states it is reasonable for the requester to filter to the information that is required, as long as the authority is confident that the request can be answered from the information provided". The Council also stated that the alternative to providing the full data set, which it stated was nearly 15,000 pages of data, would have been to refuse the request under regulation 12(4)(b) of the EIR on the grounds of the burden of complying with the request as it estimated that the time taken to extract the data requested would exceed 18 hours.

Scope of the case

9. During the course of his investigation the Commissioner advised the Council that he would be unlikely to find that it had complied with regulation 5(1) of the EIR. This is because, given the volume of information disclosed and the amount of time the Council said it would take to extract the requested information from the disclosed information, the Commissioner would be unlikely to determine that the Council can be considered to have made the specific information requested available.
10. The Council subsequently amended its position to refuse the request under regulation 12(4)(b) (manifestly unreasonable) on the grounds that to comply with the request would incur unreasonable costs. It informed the complainant of this on 5 September 2024.
11. The Commissioner is aware that the complainant has since made a refined request. However, the complainant has specifically requested that the Commissioner continue his investigation in to how this request was handled.
12. This notice therefore considers whether the Council is entitled to refuse the complainant's request of 21 March 2024, under regulation 12(4)(b).

Reasons for decision

Regulation 12(4)(b) - manifestly unreasonable requests

13. 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.
14. 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.
15. In the Commissioner's view, the key question for public authorities to consider when determining if a request is manifestly unreasonable is whether the value and purpose of the request justifies the burden that would be placed upon the authority in complying with it.
16. The Freedom of Information and Data Protection (Appropriate Limit and Fees) ("the Fees Regulations") sets out an appropriate limit for responding to requests for information under FOIA. The limit for local

authorities, such as the Council, is £450, calculated at £25 per hour. This applies a time limit of 18 hours. Where the authority estimates that responding to a request would exceed this limit, it is not under a duty to respond to the request.

17. As well as setting out the actual limits, the Fees Regulations explain what activities public authorities can take into account when estimating the cost of compliance. Those activities are limited to:
 - determining whether it holds the information;
 - locating that information or a document which may contain the information;
 - retrieving the information or a document containing it; and
 - extracting the information from a document containing it.
18. Although there is no equivalent limit within the EIR and the Fees Regulations do not apply in relation to the EIR, in considering the application of regulation 12(4)(b), the Commissioner considers that public authorities may use the FOIA section 12 limits and the Fees Regulations as an indication of what Parliament considers to be a reasonable burden to respond to EIR requests. However, the public authority must then balance the cost of complying with the request against the public value of the information which would be disclosed before concluding whether the exception is applicable.
19. In this case, the Council estimates that the total time required to carry out the four permitted activities outlined in paragraph 15 of this notice would be 20 hours. This exceeds the 18 hour time limit by two hours.
20. The Commissioner must determine whether this is a reasonable estimate. The estimate should be sensible, realistic and supported by cogent evidence. It should be based on the quickest method of gathering the information requested, considering how the public authority actually holds its records.
21. In its refusal notice sent to the complainant the Council stated that the time required for each of the four permitted activities would be as follows, 5 hours to search the records, 6 hours to locate the information, 4 hours to retrieve the information and 5 hours to extract the information.
22. It also provided the following information regarding this estimate:

“The process of identifying, locating, retrieving, and extracting the requested information would involve reviewing approximately 15,000 pages of data.

This includes:

- Searching Through Records: We would need to meticulously search through and filter approximately 15,000 pages of records to identify the relevant information.
- Locating the Information: Identifying specific instances of road closures within these records.
- Retrieving the Information: Accessing and compiling data from various sources.
- Extracting the Information: Filtering and organizing the data to meet the specific criteria of your request.”

23. The Commissioner wrote to the Council and asked it to provide further information about how it had reached the estimate of 5, 6, 4 and 5 hours respectively for each of the four permitted activities. He also asked the Council whether a sampling exercise had been carried out.

24. The Council provided the following further information regarding how it had reached the estimates for the four activities:

“Searching Through Records (5 hours): This estimate was based on the time required to manually search through approximately 15,000 pages of records. We considered the average time it takes to review each page and identify relevant information.

Locating the Information (6 hours): This involves pinpointing specific instances of road closures within the records. Given the volume of data, we estimated the time needed to locate and cross-reference relevant entries.

Retrieving the Information (4 hours): This step includes accessing and compiling data from various sources. We estimated the time based on the complexity and number of sources involved.

Extracting the Information (5 hours): This involves filtering and organising the data to meet the specific criteria of the request. The estimate was based on the time required to process and format the data appropriately.”

25. The Council stated that no sampling exercise was conducted in this instance but that the estimates provided were based on its experience and understanding of the volume and complexity of the records involved. It also confirmed that the estimate was based on the quickest method of gathering the requested information. It stated it had considered all available tools and processes to ensure efficiency in handling the request.

26. In order to better understand why it would be time consuming to comply with the request, the Commissioner also asked the Council whether it is possible to simply filter the data by ward to identify the information that relates to the wards named in the request or whether location is recorded in another way which would require cross referencing with other information to identify the ward. For the same reason, he also asked the Council whether it is straightforward to identify those entries in the data that relate to total road closures and partial road closures as defined by the complainant in the request.
27. The Council's response indicated that it was possible to break the data down by ward and that the data does include fields that can be used to identify total and partial road closures.
28. Whilst accepting that the requested information is held within a much larger data set, given the Council's response to the two questions set out in paragraph 26, the Commissioner does not consider that the Council has adequately explained, or evidenced, why it would take so long to comply with the request. More broadly, he considers the Council's explanation as to how it reached the estimate to be lacking in detail.
29. In the case of *Reuben Kirkham v IC* [2018] UKUT 126 (AAC) the Tribunal commented that a public authority is required to provide "persuasive evidence" of how they undertook their estimate of the time and cost of complying with a request. The Commissioner therefore expects a public authority to be able to provide detailed information in support of its calculations.
30. In this case, the Commissioner also considers it pertinent to note that the Council chose not to do a sampling exercise. Whilst this is not a requirement for the exception to be engaged, had the Council performed this activity in this case, this may have provided the "persuasive evidence" in support of its estimate of 20 hours.
31. The Commissioner is not satisfied that the Council has provided cogent evidence to support its estimate of 20 hours. He therefore does not accept 20 hours to be a reasonable estimate of the time it would take to comply with the request, and he is not persuaded that responding to the request would create a disproportionate burden upon the Council.
32. The Commissioner is not satisfied that the Council has demonstrated that the complainant's request was manifestly unreasonable and hence his decision is that regulation 12(4)(b) is not engaged.

33. As regulation 12(4)(b) is not engaged, the Commissioner has not gone on to consider the public interest test. At paragraph 3 above the Council is required to issue a fresh response to the request.

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.

Victoria James
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