

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

### **Decision notice**

**Date:** 7 November 2024

**Public Authority:** Grewelthorpe Parish Council  
**Address:** Grewelthorpe Village Hall  
Grewelthorpe  
Ripon  
North Yorkshire  
HG4 3BU

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

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1. The complainant submitted an information request to Grewelthorpe Parish Council (the council) for correspondence in relation to a highway issue.
2. The council cited section 14 (vexatious) of FOIA to refuse the request. The Commissioner's decision is that the council should have considered the request under the EIR. The Commissioner finds that the council was entitled to apply the equivalent exception under the EIR, regulation 12(4)(b) (manifestly unreasonable) to the request, and that the public interest in maintaining the exception outweighs the public interest in disclosure. The Commissioner also finds that the council breached regulation 14(1) of the EIR as it failed to issue an appropriate refusal notice confirming the exception, it ultimately came to rely upon, within 20 working days.
3. The Commissioner does not require further steps, as a result of this decision notice.

## Request and response

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4. On 6 March 2024, the complainant wrote to the council and requested information in the following terms:

“Under the Freedom of Information Act I request the following information:

All communication including emails and messages between parish councillors and the clerk, members of the public, officers, and councillors at NYC and each other, relating to the highways issues of the sign at top of Foul Nook Lane Highways and the designated wildflower/no cut verges from the 1st April 2023 to yesterday 6th March.

This included emails sent from personal phones and email addresses as these are covered by the statute because they relate to PC business and contain relevant councillor communication.”

5. On 11 March 2024, the council provided its response in which it withheld some of the information under section 30(1)(i) of FOIA, and stated that for the rest of the information, the complainant would have to pay as an IT specialist would be producing the records on the council’s behalf, as it cannot comply with the request within the timeframe.
6. Upon receiving this, the complainant asked the council to conduct an internal review, and on 29 March 2024 the council provided its internal review response in which it maintained its original position.

## Scope of the case

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7. The complainant contacted the Commissioner on 24 April 2024 to complain about the way their request for information had been handled.
8. In initial correspondence with the Commissioner, the council confirmed, that in its initial response, it was applying section 12(1) of FOIA to the request, through its use of the statement “cannot comply with the request within the timeframe”.
9. In later submissions to the Commissioner, the council confirmed that it was no longer relying upon sections 30(1)(i) and 12(1) of FOIA and was instead relying on section 14(1) to refuse the request.

10. In view of the nature of the request, which relates to environmental measures, the Commissioner determined that the request should have been handled under the EIR rather than FOIA. The Commissioner advised the council to issue a new response to the complainant under the EIR.
11. The Commissioner therefore considers that the scope of his investigation is to determine if the council has correctly relied upon regulation 12(4)(b) of the EIR to refuse the request.

## **Reasons for decision**

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### **Is the requested information environmental?**

12. 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);

13. In this case, the Commissioner considers that the requested information falls under both 2(1)(a) and (c) of the EIR.

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

14. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose the information to the extent that the request for information is unreasonable.

15. The Commissioner has published guidance<sup>1</sup> 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.

16. In this case, the council considers that circumstance 1) is applicable.

17. The Commissioner's guidance on manifestly unreasonable requests clarifies 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)<sup>2</sup> defines vexatious as the:

"...manifestly unjustified, inappropriate or improper use of a formal procedure."

18. As that guidance notes, four broad themes provide a useful structure to start analysing whether a request is vexatious (although they are not a checklist nor are they exhaustive). They are:

- 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.

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

<sup>2</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-14-dealing-with-vexatious-requests/>

### **The complainant's position**

19. The complainant argues that the request was submitted to obtain "clear evidence of councillor misconduct."
20. In correspondence to the Commissioner, the complainant states that the reason the council is refusing to comply with their request is because the documents "will be embarrassing" for the council and will demonstrate that the council has "breached their code of conduct in terms of their behaviour towards me."

### **The council's position**

#### **Value/purpose of the request/motive of the requester**

21. In examining motive, the council states that the complainant is "trying to divert the failure of the trail that they were heavily involved in, away from themselves."
22. The council explained that responding to the request is in the private interests of the requester rather than the wider public.
23. With regards to the wildflower verge project, the council further explains that "there was little enthusiasm for the project in 2022, and equally so in 2023 and has not been raised by North Yorkshire County Council (NYCC) in 2024."

#### **Burden/number of requests/duration**

24. The council argues that the burden in responding to this request "would be great, with little or no gain to anyone."
25. The council further explains that it has spent "countless hours" responding to the "multiple emails and accusations" from the complainant.
26. In evidencing this, the council provided the Commissioner with a large sample of emails, which span a period of several years.
27. The council further explained that through receiving three separate complaints this year alone from the same complainant - FOI request, subject access request (SAR) and a complaint to the Monitoring Officer of NYCC, that it feels like a "campaign" against their small parish council.

### **Harassment/distress to staff**

28. In examining harassment and distress to staff, the council explains that its officers have been "subject to abuse" from the complainant and that this has resulted in resignations. The council further explains that it is looking to recruit its "third Clerk in 9 months" due to "the continued interventions of the complainant."
29. Furthermore, the council states that its staff have been subject to "unsubstantiated accusations."

### **The Commissioner's position**

30. The Commissioner is keen to stress that it is the request itself that is vexatious and not the person making it.
31. The key question to consider, as objectively as possible, is whether the value and purpose of the request are enough to justify the impact of the request on the council.
32. The Commissioner accepts that when viewed in isolation, this request appears entirely reasonable, and that there is a purpose and value to the request.
33. However, when the request is taken into account alongside the context and history of the complainant's contact with the council, the Commissioner can see that it has placed a considerable strain on the council's resources.
34. The Commissioner is therefore satisfied that the request is manifestly unreasonable and regulation 12(4)(b) of the EIR is engaged. The Commissioner will now go on to consider the public interest test.

### **Public interest test**

#### **Factors in favour of disclosure**

35. The council has acknowledged the general presumption in favour of disclosure, specified under regulation 12(2) of the EIR, and confirmed that this was taken into account when assessing the public interest test in this case.
36. However, as mentioned in paragraph 21, the council believes that there is no public interest in disclosure, as the request concerns the private interests of the requester.

37. Nevertheless, the Commissioner would like to remind the council that even though a request may seem to be about a private interest, there is always factors in favour of disclosure to be considered. For example, there is always a general public interest in transparency and openness.

### **Factors in favour of maintaining the exception**

38. The council argues that the environmental project to which the request refers to "is dead" and has not been raised by NYCC this year.
39. The council further argued that the request for information was "not about the public interest but the desire of the complainant to save their reputation and exact a penalty of misconduct against officers...which has been rejected by the NYCC Monitoring Officer."
40. Furthermore, the council argues that the complainant has already received the information they have asked for as part of their SAR, and that no public interest can be served by "diverting councillors' time to produce again information the complainant already has against an environmental project that is no longer current."

### **The balance of the public interest**

41. The Commissioner recognises that there is a personal motive behind the request, however he also accepts that there is a public interest in disclosing information that provides transparency around decisions made in relation to the environment and biodiversity.
42. However, the Commissioner is also conscious of the impact placed on the council, in responding to the request, and subsequent correspondence, and whether this would be in the public interest to divert vital council resources.
43. The Commissioner is not convinced that providing further information, in relation to an environmental project that is not live would substantially add to any interest outside of the complainant's personal interests.
44. Furthermore, if the true motive of the request was to highlight councillor corruption by the complainant, again the Commissioner can see no public interest arguments in this, as this has been investigated by NYCC and its verdict was that no further action was to be taken.
45. Therefore, taking all the above into consideration, the Commissioner concludes that the public interest in maintaining the exception outweighs the public interest in disclosure.

## **Procedural matters**

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46. As set out above, in the circumstances of this case, the Commissioner has found that although the council originally considered this request under FOIA, it is the EIR that actually applies to the requested information.
47. Therefore, the Commissioner finds that the council breached regulation 14(1) of the EIR, which requires a public authority that refuses a request for information to specify within 20 working days, the exceptions upon which it is relying.



## Right of appeal

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48. 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)

49. 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.
50. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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