

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 12 November 2024

Public Authority: Northumberland County Council
Address: Northumberland County Hall
County Hall
Morpeth
NE61 2EF

Decision (including any steps ordered)

1. The complainant requested information from Northumberland County Council ("the Council") relating to a planning application.
2. The Commissioner's decision is that the Council is entitled to rely on regulation 12(4)(b) (manifestly unreasonable) to withhold the information requested in parts 1 and 3 of the request. He also finds that the Council complied with its obligations under regulation 9 of the EIR to offer advice and assistance.
3. The Commissioner does not require the Council to take any steps.

Request and response

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

"Re Planning Case [planning reference redacted]

Under the EIR/FOI regime can you provide me with copies of the following

1. All correspondence between the applicant [name redacted] and/or his expert [name redacted] of [company name redacted] and Northumberland County Council's Conservation Officer and Ecologist relating to satisfying the ecological and

conservation issues identified in the report of [name redacted] and the Memorandums of [name redacted] dated 20 July 2017, 13th June 2018 and 3rd September 2018, including all emails, correspondence and recorded notes of telephone conversations.

2. All correspondence emails letters and notes of telephone conversations between Northumberland County Council staff and the Local Government Ombudsman's Office in response to my complaint to the LGO after the Council's stage 2 Complaint Response.

It should be noted that the Council's retention schedule states that material relevant to Planning Appeals should be retained indefinitely.

The Council now say that a copy of my experts report from Design Two was uploaded to their portal in 2019. This is despite the Head of Planning in his stage 2 Complaint Response, saying the Council had never seen the report despite me hand delivering a copy at the time I sent the original to the Planning Appeal Inspectorate. It is significant that only my copy letter to the Planning Inspectorate is date stamped as received by them. The Council falsely initially told the Ombudsman that the report in their possession was also date stamped as received. This is not correct and I believe this is the copy I hand delivered to the front desk at County Hall.

As the Council say they uploaded the report to their portal in 2019, what steps did they take to address the ecological and environmental matters raised by the author [name redacted] in his report.

3. Please provide copies of all correspondence emails memos and notes from Council Officers relating to the matters raised in the Design Two report."
5. The Council responded on 5 March 2024 and refused to provide the requested information citing section 14(1) (vexatious request) of FOIA as its basis for doing so. On the same date the complainant requested an internal review.
6. The Council provided the complainant with the outcome of its internal review on 12 April 2024. It stated that it was relying on section 14(1) and section 14(2) (repeated request) of FOIA to refuse to provide the requested information.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. During the course of his investigation, the Commissioner wrote to the Council and set out his view that the information requested in part 2 of the request was the complainant's own personal data as the complainant has requested information relating to a complaint they submitted to the Local Government Ombudsman. The Council therefore provided the complainant with a response to part 2 of the request under the Data Protection Act 2018.
9. The Commissioner also informed the Council that in his view, the information requested in parts 1 and 3 of the request was likely to be environmental information as defined in regulation 2(1)(c) of the EIR. The Council subsequently revised its position and is now relying on regulation 12(4)(b) (manifestly unreasonable) of the EIR to refuse to provide the information requested in parts 1 and 3 of the request.
10. Therefore, in this notice the Commissioner will cover whether the Council is entitled to rely on regulation 12(4)(b) of the EIR to refuse to provide the information requested in parts 1 and 3 of the request.

Reasons for decision

Regulation 12(4)(b) – manifestly unreasonable

11. 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 has applied regulation 12(4)(b) to parts 1 and 3 of the request on the grounds that comply with those parts of the request would impose a significant and disproportionate burden on its resources, in terms of time and cost.
12. 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. This is set at £450 for public authorities such as the Council.
13. 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.
14. 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.
15. 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's position

16. In relation to part 1 of the request, the Council explained that it has conducted a search of its email system for correspondence from the planning application applicant, their expert and the experts company which relates to the Design Two Report. The search located 57,281 emails. The Council estimates that it would take approximately 3 minutes to review each email and determine whether it falls within the scope of the part 1 of the request. Therefore, it calculated that in total it would take 2,864 hours to review all 57,281 emails (57,281 emails x 3 minutes = 2,864 hours).
17. In relation to part 3 of the request, the Council explained that it has conducted a search of all emails held by Council Officers relating to the Design Two report. This search located 4613 emails. The Council estimates that in total, it would take approximately 230 hours to review all 4,613 emails and determine whether they fall within the scope of part 3 of the request (4,613 emails x 3 minutes = 230 hours). Therefore, it stated that it would take approximately 3,094 hours to provide the information requested in parts 1 and 3 of the request.
18. In its submissions to the Commissioner the Council explained that it has not solely applied regulation 12(4)(b) of the EIR to parts 1 and 3 of the request due to the cost of complying with parts 1 and 3 of the request. It stated that since 2021, it has received seven requests for information from the complainant which all relate to the same planning application. Four of those requests have resulted in an internal review being conducted and three of the requests have resulted in a complaint to the Information Commissioner's Office (ICO). The Council explained that in

addition to the complainant's requests for information, it has also received 429 emails from the complainant relating to the planning application.

19. The Council stated that in response to the complainant's previous requests for information, it provided any information held within the scope of the requests. It therefore believes the complainant to have made the request in this case to attempt to disrupt the Council and to express their dissatisfaction at the Council's handling of the planning application.

The complainant's position

20. The complainant does not consider their request to be burdensome. In their initial complaint to the Commissioner, the complainant acknowledged that they have submitted multiple requests for information to the Council. However, they believe that they have not submitted an excessive number of requests to the Council.
21. Furthermore, the complainant recognises that they have complained to the ICO about the Council's handling of some of their requests for information. However, they consider that it was reasonable for them to do so as during the course of the ICO's investigations into those complaints, the Council disclosed further information within the scope of their requests.
22. The complainant stated that whilst they have previously asked the Council for information relating to the planning application referred to in the request, they have not asked for information about ecological issues which has been requested in this case. Furthermore, the complainant considers that they have asked for a limited amount of information and so the request would not place a burden on the Council's resources.

The Commissioner's position

23. The Commissioner notes that the Council has stated that it would need to review 4613 emails held within the email accounts of Council officers in order to provide the information requested in part 3 of the request. He considers the Council's estimate of 3 minutes to review each of email and determine whether it falls within the scope of part 3 of the request to be reasonable. Therefore, the Commissioner accepts that it would take approximately 230 hours to provide the information requested in part 3 of the request.
24. Furthermore, the Commissioner notes that in order to provide the information requested in parts 1 of the request, the Council would also need to search for correspondence between the planning application applicant, their expert, the Council's conservation officer and its

ecologist. He considers that these searches would further add to the amount of time it would take to provide the information requested in this case.

25. Therefore, the Commissioner considers that complying with parts 1 and 3 of the request would place a disproportionate burden on the Council, both in terms of cost and resources. He is satisfied that parts 1 and 3 of the request are manifestly unreasonable and so regulation 12(4)(b) is engaged. The Commissioner will now go on to consider the public interest test.

Public interest test

26. The Commissioner is aware that the Council has misplaced and no longer holds some information relating to the planning application referred to in the request which should be held. Given this, the Commissioner considers that there is an increased need for the Council to be open and transparent about the planning application. In his view, disclosure of the information requested in parts 1 and 3 of the request would ensure that the Council is open and transparent about the planning application.
27. Although the Commissioner recognises that there are clearly wider public interest issues relating to both the proper functioning of the planning process and the importance of good records keeping associated with this complaint, he considers that the issues highlighted by the complainant primarily relate to their own private interests, rather than these wider public concerns, which have already been considered within the previous cases he has dealt with relating to this issue.
28. In conclusion, the Commissioner considers that complying with parts 1 and 3 of the request would place a significant burden on the Council and its limited resources due to the amount of time that it would take the Council to provide the requested information. In the Commissioner's view, requiring the council to carry out that work would create a disproportionate burden upon it, and he has decided that that is not in the public interest in the circumstances of this case.
29. 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.
30. 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).

31. 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 information requested in parts 1 and 3 of the request.

Regulation 9 – advice and assistance

32. 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.
33. In its submissions to the Commissioner, the Council stated that it is unable to advise the complainant on how to reduce the scope of parts 1 and 3 of the request due to the large amount of information that has been requested.
34. In this case, the Commissioner is unable to identify any advice and assistance which could have been provided by the Council that would have assisted the complainant in refining either part 1 or 3 of the request so that they falls within the appropriate limit. Therefore, he considers that the Council has met its obligations under regulation 9(1) of the EIR.

Right of appeal

35. 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

36. 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.
37. 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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