

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

Date: 12 December 2024

Public Authority: Kent County Council
Address: Sessions House
County Hall
Maidstone
Kent
ME14 1XQ

Decision (including any steps ordered)

1. The complainant requested information about inspections of a particular vehicle crossing. Kent County Council (the Council) refused the request, citing regulation 12(4)(b) (manifestly unreasonable) of the EIR. The Commissioner's decision is that the Council correctly applied regulation 12(4)(b) to the request. The Commissioner does not require any steps to be taken.

Request and response

2. On 27 February 2024 the complainant wrote to the Council and requested information in the following terms:

"Monthly Inspection of vehicle crossing [address redacted]

Please advise the last three inspection dates and times, for compliance of the vehicle crossing agreement, as set up by [officer name redacted] – KCC Highways Manager".
3. The Council responded on 8 May 2024 and stated that it was refusing the request under regulation 12(4)(b) of the EIR, in line with its

responses dated 25 January 2024 and 26 February 2024, concerning a previous related request for information.

4. On 15 May 2024 the complainant requested an internal review of the handling of their request. They advised that their reasons were outlined in a previous internal review request dated 29 January 2024 and provided a copy of that communication.
5. The Council provided the outcome of its internal review on 13 June 2024 and upheld its position that regulation 12(4)(b) applied to the request.

Scope of the case

6. The complainant contacted the Commissioner on 17 June 2024 to complain about the way their request for information had been handled.
7. The scope of the Commissioner's investigation into this complaint is to determine whether the Council correctly applied regulation 12(4)(b) to the request of 27 February 2024.

Reasons for decision

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

8. Regulation 12(4)(b) of the EIR states that:

“For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that—

(b) the request for information is manifestly unreasonable;”
9. The Commissioner has issued public guidance¹ 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.

¹ <https://ico.org.uk/for-organisations/eir-and-access-to-information/guide-to-the-environmental-information-regulations/refusing-a-request/#when-can-we-refuse-a-request-for-environmental-information-3>

10. In this case, the Council considers that circumstance 1) is applicable, ie that the request is vexatious.
11. The Commissioner recognises that, on occasion, there can be no material difference between a request that is vexatious under section 14(1) of the FOIA and a request that is manifestly unreasonable on vexatious grounds under the EIR. The Commissioner has therefore considered the extent to which the request could be considered vexatious.
12. The Commissioner has published guidance on vexatious requests². As confirmed in this guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. Sometimes, it will be obvious when requests are vexatious, but sometimes it may not. In such cases, it should be considered whether the request would be likely to cause a disproportionate or unjustified level of disruption, irritation or distress to the public authority. This negative impact must then be considered against the purpose and public value of the request. A public authority can also consider the context of the request and the history of its relationship with the requester when this is relevant.
13. While section 14(1) of the FOIA effectively removes the duty to comply with a request, regulation 12(4)(b) of the EIR only provides an exception. As such the EIR explicitly requires a public authority to apply a public interest test (in accordance with regulation 12(1)(b)) before deciding whether to maintain the exception. The Commissioner accepts that public interest factors, such as proportionality and the value of the request, will have already been considered by a public authority in deciding whether to engage the exception, and that a public authority is likely to be able to 'carry through' the relevant considerations into the public interest test. However, regulation 12(2) of the EIR specifically states that a public authority must apply a presumption in favour of disclosure. In effect, this means that the exception can only be maintained if the public interest in refusing the request outweighs the public interest in responding.

The Council's position

14. The Council advised the Commissioner that it considers the request in this case is linked to an earlier request for information, dated 27 December 2023, which was the subject of a previous complaint to the Commissioner. A decision notice was issued in relation to that request

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

on 29 July 2024³ and upheld the Council's application of regulation 12(4)(b) to the request.

15. The Council considers that the request which is the subject of this notice is a continuation of previous requests, correspondence and complaints that the complainant has submitted about the vehicle crossing in question. The Council confirmed to the Commissioner that it considered its representations in relation to its application of regulation 12(4)(b) to the request dated 27 December 2023 to equally apply to the request dated 27 February 2024.
16. The Council considers that the request is a further attempt to reopen matters relating to the subject matter. It is also of the view that engaging further with the complainant on the issue would lead to further communications and requests for information.

The Commissioner's conclusion

17. The Commissioner has considered the request which is the subject of this notice, in conjunction with the previous complaint he dealt with under reference number IC-291293-J9C8. He notes that the request was submitted around 3 months after the earlier request. Based on the wording of the requests and the Council's representations, the Commissioner accepts that the request is a continuation of a pattern of correspondence and behaviour linked to the same subject matter, ie the vehicle crossing in question.
18. In reaching a decision in this case the Commissioner has considered the arguments and representations submitted by the Council. These arguments were considered by the Commissioner in his previous decision notice referred to in paragraph 14 above where he accepted that section 14(1) applied to the previous request.
19. The Commissioner has determined that, based on his decision in case IC-291293-J9C8, the same conclusion should be reached in regard to this request, and for the same reasons. The Commissioner's decision is therefore that the Council was therefore entitled to refuse the request on the basis of regulation 12(4)(b) of the EIR.

³ <https://ico.org.uk/media/action-weve-taken/decision-notices/2024/4030583/ic-291293-j9c8.pdf>

Right of appeal

20. 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

21. 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.
22. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Joanne Edwards
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Wycliffe House
Water Lane
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