

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 13 December 2024

Public Authority: Westmorland and Furness Council

Address: South Lakeland House
Lowther Street
Kendal
LA9 4UG

Decision (including any steps ordered)

1. The complainant requested information from Westmorland and Furness Council ("the Council") regarding noise complaints. The Council refused the request under regulation 12(4)(b) of the EIR (manifestly unreasonable) on the grounds that complying with the request would incur unreasonable costs.
2. The Commissioner's decision is that the Council is entitled to refuse the request under regulation 12(4)(b). 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 further steps.

Request and response

4. On 7 January 2024, the complainant wrote to the Council and requested information in the following terms:

"Please can you provide the total number of noise complaints received by the Council per year. Of the complaints received, please provide the number of complaints that were investigated (such as by the installation of noise monitoring equipment) and the total number that were closed prior to any further action. The total number of noise enforcements (such as a noise abatement order) per year should also be given with a brief summary of the outcomes as appropriate. The information should be itemised by

building type (or similar) e.g. industrial noise, residential noise, etc.

Please provide the information from the first day of Westmorland and Furness Council to present. For records before the creation of Westmorland Council, please provide the information for South Lakes Council annually from 2015 onwards.

Please feel free to contact me should you require any additional information or clarification.”

5. The Council responded on 13 February 2024. It provided information regarding the total number of noise complaints across all three of the former Council areas (Eden and South Lakeland District Councils and Barrow Borough Council). It also disclosed the further information held regarding complaints made to Barrow Borough Council. However, it stated that it would be very time consuming to comply with other aspects of the request for information relating to Eden and South Lakeland District Councils. It therefore refused the request under regulation 12(4)(b) of the EIR.
6. Following an internal review the Council wrote to the complainant on 11 July 2024. It maintained its original position. It also acknowledged that it had failed to comply with the request within 20 working days and had failed to carry out the internal review within 40 working days.

Reasons for decision

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

7. 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.
8. 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.
9. 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.
10. 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.

11. Although there is no equivalent limit within the EIR, in considering the application of regulation 12(4)(b), the Commissioner considers that public authorities may use the section 12 limits 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 calculated to respond to the request against the public value of the information which would be disclosed before concluding whether the exception is applicable.
12. When estimating the time it would take to comply with a request, this estimate must be reasonable, in that it should be sensible, realistic and supported by cogent evidence. It should be based on the quickest method of gathering the information requested, however, the estimate should be based on how the public authority actually holds its records whether its records management represents good practice or not.
13. For context, it is important to note that Westmorland and Furness Council was formed on 1 April 2023, replacing the former Eden and South Lakeland District Councils and Barrow Borough Council. Information about noise complaints had been recorded in different ways by these legacy councils.
14. The Commissioner notes, however, that the request specified the following information should be provided, "please provide the information from the first day of Westmorland and Furness Council to present. For records before the creation of Westmorland Council, please provide the information for South Lakes Council annually from 2015 onwards". The Commissioner's view is that, given the context of the request, "South Lakes Council" can be reasonably be assumed to refer to South Lakeland District Council. Although best practice would have been for the Council to ask the complainant for clarification if there was any doubt over their meaning.
15. The Commissioner therefore considers that only information relating to complaints to Westmorland and Furness Council and to South Lakeland District Council is in scope of the request. The time taken to provide information relating to complaints made to Eden District Council and Barrow Borough Council should not have been included by the Council when estimating the time it would take to comply with the request.

16. The Council has stated that to provide the information requested relating to complaints made to South Lakeland District Council would take 292.41 hours. This is well in excess of the section 12 limit of 18 hours. The Commissioner will therefore consider whether this is a reasonable estimate.
17. In its refusal notice the Council provided the following information about how it had estimated the time it would take to provide the full information requested about the complaints relating to South Lakeland District Council:

“Please see the attached spreadsheet for total noise complaints from April 2015 to December 2023 and Abatement Notices since 2015 – 2023. However Environmental Protection at South Lakeland are unable to provide details of the actual investigations, such as whether noise monitoring equipment was installed or whether a case was closed prior to any further action, without examining each case individually.

South Lakeland estimates that it would take approximately 5 minutes to read and record the requested information or 5×3509 complaints = 17545 divided by 60 = 292.41 hours.”

18. The Commissioner’s view is that an estimate of five minutes per complaint to manually read the information held about the complaint and extract the information requested is reasonable. He therefore accepts that 292.41 hours is a reasonable estimate of the time it would take to comply with the request.
19. The Commissioner recognises that compliance with the request would incur significant cost, far in excess of the appropriate limit set for FOIA. The Commissioner is therefore satisfied that compliance with the request would be manifestly unreasonable, and that the Council is entitled to rely upon regulation 12(4)(b) to refuse it.
20. When considering whether the public interest favours maintaining the exception or actioning the request, the Commissioner has taken into account that there is an inherent public interest in openness and transparency by the Council, particularly in regards to how it handles noise complaints.
21. However, the Commissioner recognises that the purpose of the exception is to protect finite public resources from being unnecessarily consumed. In the circumstances of this case, compliance with the request in full would consume significant public resources.

22. Having considered the public interest arguments, the Commissioner finds the public interest in protecting public resources to be the stronger argument.
23. 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).
24. As covered above, in this case the Commissioner's view is that the balance of the public interests 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.

Regulation 9 – advice and assistance

25. 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.
26. In its submissions to the Commissioner, the Council stated that it had not provided advice and assistance to the complainant regarding how they could refine their request to bring it under the cost limit. However, it highlighted that it had provided the information requested by the complainant in a refined request made on 19 March 2024. The Council also referred to this refined request in its internal review.
27. As the complainant had already submitted a refined request that fell within the appropriate limit before the internal review response was provided, the Commissioner considers it was reasonable of the Council not to provide advice about refining the request at that stage as it appears no such advice was required. Therefore, he considers that the Council has met its obligations under regulation 9(1) of the EIR.

Right of appeal

28. 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

29. 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.
30. 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
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF