

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 16 December 2024

Public Authority: Cheshire East Council
Address: Municipal Buildings
Earle Street
Crewe
Cheshire
CW1 2BJ

Decision (including any steps ordered)

1. The complainant requested information relating to how Cheshire East Council (the Council) manage odour breaches. The Council stated that it was relying on regulation 12(4)(b) (manifestly unreasonable) of the EIR to refuse the request.
2. The Commissioner finds that the Council was entitled to apply regulation 12(4)(b) to the request.
3. The Commissioner does not require further steps.

Request and response

4. On 20 May 2024, the complainant wrote to the Council and requested information in the following terms:

“With reference to the FOIA would you please provide me with the following information. NB I have asked some of these previously, but have yet to receive an answer. Simply asserting that I already have the information (which I do not) is not an answer.:

1. A copy of the investigation undertaken by the Monitoring Officer relating to the odour breach that occurred in 2020. I attach a copy of the Council's letter detailing the odour breach that occurred in 2020. The Council's Acting Executive Director - Place & Director of Growth and Enterprise kindly informed me (letter dated 26th April 2024) that the Monitoring Officer undertook an investigation into this statutory nuisance complaint.
2. The location within ANSA's Environmental Permit that specifically addresses statutory nuisance (i.e. the condition within the Permit) that the Monitoring Officer is relying upon to avoid the Council investigating statutory nuisance complaints (foul smells) and serving a Council agreed statutory nuisance offender with an abatement notice. The Monitoring Officer's assumption that an odour condition within ANSA's Environmental Permit is a statutory nuisance is not sufficient evidence to prevent the Council undertaking its statutory duties as defined with in the EPA1990 or the "Nuisance Smells" document. Please note, the Environment Agency is absolutely adamant they do not investigate statutory nuisance complaints relating to the Council's ANSA site.
3. The Monitoring Officer has stated (letter dated 22nd March 2023) that ANSA's Environmental Permit makes reference to odour and odour is a 'statutory nuisance provision'. Would you please advise me of the specific place within ANSA's Environmental Permit that states that odour is a statutory nuisance.
4. The Monitoring Officer also stated in his letter re the Council's investigation of statutory nuisance complaints, that "In relation to FOI request 18822929 you ask whether residents were advised of the rationale for closing their complaint. Complainants were advised to return log sheets detailing instances where they were affected by odour and that without such evidence then the Council would be unable to progress their complaint". Would you please provide me with the location within the EPA1990 or the 'Nuisance smells' document, or any piece of government legislation that states statutory nuisance complaints relating to odour/foul smells are to be investigated using the Council's rationale. NB It would appear that this rationale relates to noise complaints rather than odour complaints.

5. The Council's Environmental Health Officer, stated in his email 18th May 2021 (details attached) that 'regarding statutory nuisance investigations and the option we have available to serve and enforce a notice with the Secretary of States approval. Generally, this is done when we have reason to believe or can prove that the Environment Agency have not conducted a satisfactory investigation'. Would you please provide me with a copy of the legislation/government guidance documentation used by the Council to prove that the Environment Agency has not conducted a satisfactory investigation into a statutory nuisance complaint relating to foul smells"
3. The Council responded on 29 May 2024, citing section 14(1) (vexatious request) of the Freedom of Information Act 2000 (FOIA) and regulation 12(4)(b) (manifestly unreasonable) of the EIR to refuse the request.
4. Following an internal review, the Council wrote to the complainant on 9 July 2024. It confirmed that as the requested information was environmental it was withdrawing its reliance on section 14(1) of FOIA and was refusing the request entirely under regulation 12(4)(b).

Scope of the case

5. Within their complaint to the Commissioner of 25 July 2024, the complainant has stated that they are unhappy with the application of section 14(1) of FOIA to their request.
6. While the complainant has referenced section 14(1) of FOIA within their complaint to the Commissioner, the Council, within its internal review response, has confirmed that the request is being refused under regulation 12(4)(b) of the EIR.
7. Therefore the scope of the case is to determine if the Council was correct to apply regulation 12(4)(b) of the EIR to the request.

Reasons for decision

Is the requested information environmental?

8. The requested information concerns issues surrounding an odour breach in 2020. As such, the Commissioner is satisfied that the information sought is environmental information under regulation 2(1)(a) and 2(1)(b) of the EIR.

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

9. Under Regulation 12(4)(b), a public authority can refuse to disclose environmental information if the request for that information is manifestly unreasonable. A request may be manifestly unreasonable either because of the excessive burden it would require in order to comply with it, or because the request is vexatious.
10. The position of the Council is that the complainant's request was manifestly unreasonable on the grounds of it being vexatious.
11. In determining whether a request is manifestly unreasonable on the grounds of vexatiousness, the Commissioner's [guidance](#) states that the key question which public authorities need to consider is whether complying with the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
12. Where this is not clear, public authorities should weigh the impact on the authority and balance this against the serious value and purpose of the request. Where relevant, public authorities can take into account wider factors such as the background and history of the request.

The complainant's view

13. The complainant has stated that the request is not vexatious since it is in the public interest that the information be disclosed. Though no arguments as to why disclosure would be in the public interest have been provided.

The Council's view

14. Within its submission to the Commissioner, the Council has provided background and context to the request. It has confirmed that the complainant has made multiple requests for the same, or similar, information going back a number of years, and has stated that these have been comprehensively addressed.
15. The Council provided information about the requests submitted by the complainant. This information includes copies of its responses to the complainant from previous requests or general correspondence and a summary of the various requests. This summary confirms if the request is linked to the substantive matter, and how the Council responded, including whether the information was refused or provided.

16. The summary of requests shows that between 10 September 2019, and the date of the request being considered here, 20 May 2024:
 - The complainant has submitted 22 requests under FOIA/EIR;
 - 19 are linked to the substantive issue in the current request;
 - Of those 19, 16 have resulted in full disclosure of the requested information;
 - Of the remaining three, one was partly refused as being vexatious/manifestly unreasonable; and
 - Two have been refused in their entirety as being vexatious or manifestly unreasonable.
17. The Council is of the opinion that continuing to respond to requests for the same, or similar, information would increase the burden on the Council.
18. The Council has stated that, in addition to the requests noted above, it continues to receive a vast amount of correspondence from the complainant on the same subject. This correspondence is sent using a 'scattergun' approach, being sent to various officers or teams including the Chief Executive, Monitoring Officer, Head of Environment, External Auditor, Planning Team, Complaints Team, and the Audit and Risk Team.
19. This 'scattergun' approach has led the Council to put special measures in place in order to manage the disruption caused by the volume of correspondence. The complainant has been asked to comply with these special measures, but they have refused to do so. They have continued to write to multiple officers, teams and Councillors in relation to the same topic. The Council is of the view that this is evidence of unreasonable behaviour on the part of the complainant.
20. The Commissioner has considered the value and purpose of the request and has compared these to the impact that responding to the request may have on the Council.
21. Given the length of time over which requests have been made, the number of requests for the same, or similar, information, and the amount of time the Council has already spent addressing the various requests and complaints, it is the opinion of the Commissioner that to respond to the request being considered here, would cause significant disruption to the Council which would negatively impact on its ability to carry out its statutory duties. The Commissioner's view is that this is not a good use of Council time or resources.

22. Given all the above, the Commissioner would agree that the number, frequency, and focus of the requests on one particular issue which dates back to 2010, does appear to be evidence of overly persistent behaviour.
23. The Commissioner's decision is that the request is manifestly unreasonable and that regulation 12(4)(b) is engaged.

Public interest test

24. Regulation 12(4)(b) is subject to the public interest so, having found that the request was manifestly unreasonable, the Commissioner must go on to consider where the balance of the public interest lies.
25. The Commissioner accepts that there is a strong argument in understanding how the Council makes decisions about the environment. However, according to the information available to the Commissioner, 16 previous requests from the same complainant, linked to the substantive matter, have resulted in full disclosure of the requested information.
26. Given this, it is the view of the Commissioner that the public interest in openness around the Council's decision making on the matter of interest to the complainant has already been at least partly satisfied.
27. Within its submission to the Commissioner, the Council advised that it had reviewed other information requests submitted in the last 12 months in an attempt to determine if there was a wider public interest in this matter.
28. It stated that it had found only one request within the last 12 months that was submitted by someone other than the complainant. That request was not directly related to the same substantive matter but asked for odour complaints received by the Council in general.
29. It is clear from the number of requests submitted by the complainant that they have a private interest in this matter. However, apart from the request mentioned above, the Commissioner is unaware of any wider local interest in the substantive matter.
30. It is the view of the Commissioner that requiring the Council to continue to deal with multiple requests for the same, or similar information, will cause a disproportionate and unjustified level of disruption to the Council, and that this will divert time and resources from fulfilling its statutory functions, which is not in the public interest.

31. The decision of the Commissioner is that the balance of the public interest lies in favour of maintaining the exception and that the Council were correct to apply regulation 12(4)(b) to the request.

Right of appeal

32. 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

33. 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.
34. 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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