

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 19 December 2024

Public Authority: Tendring District Council
Address: Town Hall
Station Road
Clacton on Sea
CO15 1SE

Decision (including any steps ordered)

1. The complainant has made a number of requests relating to a specific land development. The Tendering District Council ("the Council") refused the request under regulation 12(4)(b).
2. The Commissioner's decision is that the Council was entitled to refuse the request under regulation 12(4)(b). He also finds that the Council breached regulation 5(2), by failing to respond to multiple requests within 20 working days.
3. The Commissioner does not require further steps.

Request and response

4. The complainant wrote to the Council on seven occasions requesting information. These requests ranged from 2 June 2024 to 1 July 2024.
5. Due to the size of the requests, the Commissioner has reproduced these within an annex at the bottom of this decision notice.
6. The Council responded to all the requests on 3 July 2024. It stated that the requests were being refused under regulation 12(4)(b), a position which it maintained during its internal review.

Reasons for decision

Is the requested information environmental?

7. 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);
8. In the circumstances of this case, the requested information ranges from information relating to specific planning applications, changes relating to the delegated functions for approving planning applications and 106 agreements. The Commissioner believes that as all the requested information is likely to be information on measures affecting or likely to affect the elements of the environment. For procedural reasons, he has therefore assessed this case under the EIR.

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

9. Regulation 12(4)(b) 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;”

10. 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.

11. In this case, the Council considers that circumstance 1) is applicable.

12. 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)² defines vexatious as the:

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

13. 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.

The complainant’s position

14. The complainant explained that under EIR, they have a right to access recorded information held by public authorities. They added that making requests for information under EIR cannot be considered as harassing the authority.

¹ [Manifestly unreasonable requests - Regulation 12\(4\)\(b\) \(Environmental Information Regulations\) | ICO](#)

² [Dealing with vexatious requests \(section 14\) | ICO](#)

15. The complainant added that the burden being placed on the Council should not be significant, as the requested information should already be held and some should have already been published.
16. The complainant advised that the number of requests had occurred due to previous responses to previous requests. These responses had left the complainant with more questions than answers, resulting in further requests being required.
17. The complainant explained that as the requests were distinctively different it was clear that they were not vexatious.
18. The complainant concluded that responding to the request would ensure that public confidence in the Council is maintained.

The Council's position

19. The Council advised the complainant that the requests in question were becoming excessive, harassing the authority and imposing a significant burden on it.
20. The Council stated that it appeared the complainant's requests were not an attempt to obtain information of value, but rather an attempt to seek information to serve their private interests only. The Council explained that the complainant appeared to have a grievance with it, over a dispute regarding their property's view and development within the area.
21. The Council explained that between 23 May 2024 and 9 July 2024, it had received a total of 9 requests, all of which relate to the same residential development. The requests either related to the planning applications or the S106 agreements for that residential development.
22. The Council informed the Commissioner that, whilst in the circumstances, the requests might appear to cover different aspects of the planning processes, they do all cover the one residential development and particular aspect of that development.
23. Due to this, the Council determined that these requests demonstrated the unreasonable persistence and inappropriate use of the public authority's resources. The Council advised that this was a clear misuse of the EIR legislation.
24. The Council also informed the Commissioner that the complainant had made allegations of malpractice and wrongdoing in their correspondence, and has also queried the authority of staff members. The Council confirmed that for officers to be accused of wrongdoing, failing to undertake their roles properly or without due consideration,

and/or malpractice, when undertaking their roles has caused both distress and irritation, and is demoralising: officers are simply seeking to carry out their jobs and deliver the services the Council is required to deliver, including planning services, to all of the residents of the district.

25. The Council advised that, due to the number of requests and reviews, the complainant appeared to have a scattergun approach when contacting the Council, in the hopes that information not previously provided will be uncovered. The Council explained that these requests had placed a strain on the Council's resources and have resulted in diversion of these resources.
26. The Council added that it is a relatively small authority, with available resources now finite and already stretched without the additional burden of the complainants requests.

Public interest test

27. 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.
28. The Commissioner acknowledges that there would be a public interest in disclosing the requested information, as it would demonstrate that the Council is working in an open and transparent manner.
29. The Commissioner also notes that disclosure could allow the Council to demonstrate that it is upholding standards of integrity, which again would be in the public's interest.
30. The Commissioner notes that complying with such a large number of requests would likely place a strain on the Council's resources and lead to diverted resources. This diversion of resources would also have a negative impact on the other services being provided by the Council, which would not be in the public's interest.
31. The Commissioner is satisfied that multiple requests from one individual which have a similar theme could lead to staff members feeling distressed or irritated. The Commissioner does not consider it to be in the public interest to expose the Council's staff to a disproportionate burden, unjustified level of distress or disruption. Allowing such things to take place would clearly have a negative impact on the work undertaken by members of staff, which again would not be in the public's interest.
32. Whilst the Commissioner has been informed by the presumption in favour of disclosure, he is satisfied that, for the reasons given above, the exception has been applied correctly.

Procedural matters

33. Regulation 5(2) of the EIR requires a public authority to respond to information requests within 20 working days of receipt. The Council failed to do that in this case and so the Commissioner has recorded a breach.

Annex

34. On 2 June 2024, the complainant wrote to the Council and requested information in the following terms:

“Please provide details of any TCPA section 106 agreements between the dates of 1 March 2017 and the 31 May 2024 that was agreed with a planning obligation that restricted;

1. development of land
2. use of land
3. transfer of ownership of public open space land

For each please identify if there were requirements to complete the obligation before a specific event and if that event was exceeded the date the enforcement action taken.

Please provide details of any injunctions that were sort in pursuit of holding the developer to its original agreement.

Please also confirm if these specific obligations were registered on the TDC Local Land Charges Register so as to alert purchasers to their existence.”

35. On 2 June 2024, the complainant wrote to the Council and requested information in the following terms:

“Please provide detailed discussion, emails [consultations] with land owners, agents in house legal advice regarding the laws approving planning

1. Please provide details of any decisions or consultations taken to include the land bounded by EX828567 inside the settlement boundary for Thorpe le Soken following the approval of 16/01169/OUT.
2. Please provide details of any pre planning consultation correspondence for 21/01397/FUL.
3. Following TDC receiving the application 21/011397/FUL Please provide details of the decision / assessment that led to the site notice 16 Sep 2021. This should include the person who issued that notice and their reasons.
4. Following TDC receiving the application 21/011397/FUL please provide details of any checks TDC made as to the accuracy of the ownership certificate. This should include if the planning officers made

enquiry as to the occupancy limit being exceeded and if the transfer had taken place.”

36. On 3 June 2024, the complainant wrote to the Council and requested information in the following terms:

“This request is being made under the EIR as it concerned the development and use of land under a s106 agreement likely to affect the state of the land as an element of the environment. Please provide full details of the training records for those members of the planning committee who sat and determined applications on the 12 March 2024. For each member please provide their training record and any testing result to ensure they understood what they were being taught. Please provide the training details for the following issues and any supporting case law;

1. the difference between planning obligations and planning conditions
2. Ownership certificates and TCPA section 65
3. When TCPA section 73 can and cannot be used
4. The enforcement of TCPA s106 obligations”

37. On 9 June 2024, the complainant wrote to the Council and requested information in the following terms:

“Please provide any recorded information regarding any meeting the council had with Essex police regarding any planning applications such as 21/01497/FUL and the access from Henderson Park estate. The information requested is being made under the Environmental Information Regulations as it concerns development of land and should include copies of;

1. any correspondence received in connection to the meeting its purpose the agenda and any recorded minutes of the meeting

1. Any follow-up information
2. any recorded information from the councils in-house solicitor.”

38. On 23 June 2024, the complainant wrote to the Council and requested information in the following terms:

“...The planning application 21/01397/FUL submitted a Planning, Design and Access Statement (PDAS) in which it proposed to make the development acceptable by including Occupancy Restrictions to those over 55 or those with medical conditions who would benefit from single story occupation. It set out a schedule of the proposed wording to be used. In the event this planning obligation was not made as the s106 agreement and was not submitted to the planning committee.

Please provide any information regarding consultations that took place and should include;

1. Any assessment consultations made regarding the decision not to submit the planning obligations and application to the planning committee and follow due process
 2. Any information regarding consultations with the chair of the planning committee and legal officers
 3. Any information between the council Strutt and Parker (Farms) Limited and their agents Scott Properties regarding their Planning application
 4. Any information including legal advice in the drafting and approval of the s106.
 5. Any information regarding checks the legal officer made that the s106 was procedurally fair and in line with due process."
39. On 24 June 2024, the complainant wrote to the Council and requested information in the following terms:

"This EIR request concerns information regarding the Delegated Decision Report available on the planning portal 21/01397/FUL 13 Feb 2023.

The delegated Decision report lists 3 persons with initials. In particular who is JJ? Please provide the names of those persons and the position held.

Please provide a copy of any information including drafts and the names of those person who were directly involved in the preparation of the report

I would like to receive copies of recorded information by email as attachments of original documents."

40. On 1 July 2024, the complainant wrote to the Council and requested information in the following terms:

"Please provide any information regarding changes to the Tendring District Council's Constitution document regarding Delegated Functions for approving Planning applications.

The cabinet are responsible for making changes to the constitution document and recording the proposed text change. Unfortunately there

is a mismatch of whose role it is delegated to approve planning matters in various documents.

I. Part 3 - Responsibility of Functions.pdf

II. Part 3 - Delegated Powers - Sept 2023.pdf

III. Complete Version of the Constitution April 2023.pdf

The Cabinet meeting of the 9/11/2018 has recorded that it is the Head of Planning. Any delegation of roles should also be recorded at the cabinet meeting as it relates to the Constitution.

In a previous EIR request you reported that the Head of Planning resigned in April 2020 and the Assistant Director (Planning) resigned in Oct 2022 and neither of these roles were replaced.

I have spent some considerable time going through the Cabinet meetings since 9/11/2018 and cannot find any record of the constitution changing from Head of Planning to Assistant Director (Planning) or of the change in the 4.4 clauses.

Please provide any original recorded information;

1. Details and record of the Cabinet meeting or otherwise that made changes to the constitution from Head of Planning to Assistant Director (Planning)
2. Details and record of the cabinet meeting or otherwise that made changes to the Part 3 Schedule 3 clause 4.4 from 10 to 12 clauses.
3. Details and record of the Cabinet meeting or otherwise agreeing to change delegation from Head of Planning to Assistant Director (Planning) or otherwise."

41. The Council responded to all the requests on 3 July 2024. It stated that all the requests were being refused inline with regulation 12(4)(b). A position which it maintained during its internal review.

Right of appeal

42. 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

43. 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.
44. 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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