

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

Date: 1 April 2025

Public Authority: West Sussex County Council
Address: County Hall
Chichester
West Sussex
PO19 1RG

Decision (including any steps ordered)

1. The complainant requested information relating to a landslip on the A29 in Pulborough which caused the road to be closed. West Sussex County Council ("the council"), refused the request on the basis that Regulation 12(4)(b) applies (manifestly unreasonable request).
2. The Commissioner's decision is that the council was able to apply Regulation 12(4)(b) to refuse to respond to the request.
3. The Commissioner does not require further steps.

Request and response

4. On 12 June 2024, the complainant wrote to the council and requested information in the following terms:

"Under the Freedom of Information Act 2000, I am requesting the following information regarding the closure of the A29 in Pulborough due to the landslide event:

- "Pre-Landslide Information:
- Any geological surveys, risk assessments, or reports conducted prior to the landslide that identified potential risks or instability in the area.
- Any maintenance or repair work performed on the A29 or adjacent embankments prior to the landslide.
- Landslide Event Information:
- A detailed timeline of the landslide event, including date, time, and extent of the damage.
- Reports, assessments, or surveys conducted immediately following the landslide to determine the cause and extent of the damage.
- Post-Landslide Actions and Plans:
- All correspondence (emails, letters, meeting minutes) between the council and relevant parties (landowners, contractors, consultants, legal advisors) regarding the closure and potential solutions.
- Details of any offers made to landowners for repairs, stabilization, or land acquisition, including the terms of the offers and the landowners responses.
- All legal documents, notices, orders, or court filings related to the closure, including any injunctions or legal challenges.
- A detailed plan for the future of the A29, including timelines for repairs, potential reopening dates, and any alternative routes or traffic management measures being considered.
- Financial Information:
- A full breakdown of all costs incurred by the council in relation to the A29 closure, including staff time, contractor fees, legal expenses, and any other relevant costs.
- Details of any insurance claims or settlements related to the landslide.
- Personnel Information:
- The names and job titles of all council employees and external parties (consultants, legal advisors, etc.) involved in the management of the A29 closure."

5. The council responded on 10 July 2024 and refused the request on the basis that Regulation 12(4)(b) of the EIR applied (manifestly unreasonable requests).
6. Following an internal review, the council wrote to the complainant on 13 September 2024. It upheld its initial decision.

Scope of the case

7. The complainant contacted the Commissioner on 25 September 2024 to complain about the way their request for information had been handled. They argue that the public interest in the information being disclosed outweighs the burden which would be created on the council in responding.
8. The Commissioner suggested to the complainant that, for the reasons outlined within the council's response and its internal review response, the exception was likely to have been applied correctly due to the volume of information which they had requested, together with the council's description of the work involved in providing a response. The Commissioner suggested that the complainant withdraw the complaint and make a new, narrower, request for information.
9. The complainant, however, argued that a narrowed request had already been refused by the council for the same reasons, and therefore, they wished the Commissioner to consider their arguments for the information being disclosed.
10. The following therefore considers whether the council was correct to refuse the request on the basis that Regulation 12(4)(b) applies.

Reasons for decision

Is the requested information environmental?

11. Although the Commissioner has not seen the requested information, as it is information relating to the council's actions following a land slide closing a section of road it is likely to be information on measures and plans which will affect the elements of the environment outlined in [Regulation 2\(1\)\(a\)](#) of the EIR.

12. Neither party has disputed that the information relates to the environment, or that the EIR is the correct legislation for it to be considered under. The Commissioner has therefore assessed this case under the EIR.

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

13. 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.
14. 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 in order for the exception not be engaged. One such way a request could be manifestly unreasonable is if a public authority is able to demonstrate that the time and cost of complying with the request is obviously unreasonable.
15. Regulation 12(4)(b) of the EIR exists to protect public authorities from exposure to a disproportionate burden in terms of the amount of time and resources that they have to expend in responding to a request.
16. In the Commissioner's view, the key question for public authorities to consider when determining if a request is manifestly unreasonable is therefore whether the value and purpose of the request justifies the burden that would be placed upon it in complying with the request.
17. In assessing whether the cost or burden of dealing with a request is too great, the Commissioner will consider the level of the costs involved and decide whether they are clearly or obviously unreasonable. In deciding this, he will also take into account factors such as:
 - the nature of the request and any wider value in the requested information being made publicly available;
 - the importance of any underlying issue to which the request relates, and the extent to which responding to the request would shed light on that issue;
 - the size of the public authority and the resources available to it, including the extent to which responding would distract it from delivering its other services; and
 - the context in which the request is made, which may include the cost of responding to other requests on the same subject from the same requester.

18. 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.
19. As well as setting out the actual limits, the Fees Regulations explain what activities public authorities can take into account when estimating the cost of compliance. Those activities are limited to:
 - a. determining whether it holds the information;
 - b. locating that information or a document which may contain the information;
 - c. retrieving the information or a document containing it; and
 - d. extracting the information from a document containing it.
20. Although it cannot be taken into account under FOIA, under the EIR, the burden of considering whether any exceptions are applicable to the information can also be taken into account in determining whether Regulation 12(4)(b) can be applied.
21. There is no equivalent limit within the EIR and the Fees Regulations do not apply in relation to the EIR, in considering the application of Regulation 12(4)(b). However, the Commissioner considers that public authorities may use the FOIA section 12 limits and the Fees Regulations as an indication of what Parliament considers to be a reasonable burden to respond to EIR requests.
22. As noted above, the public authority must then balance the burden of complying with the request against the public value of the information which would be disclosed before concluding whether the exception is applicable.

The complainant's arguments

23. The complainant does not dispute that they have requested a large amount of information. They argue that there is a substantial public interest in the requested information being disclosed which should override any concerns regarding the time and resources it would take to provide a response to their request. This is because the landslide, in December 2022, has led to temporary closures of an A road which requires users to make a detour around it, and other restrictions being

put into place over the period. This situation has continued since December 2022. The council argues that this is partly as a result of a [dispute](#) between it and landowners whose land adjoins the section of road. It argues that this has led to the council being unable to carry out the measures it needs to be able to make the road safe and fully reopen it.

24. The complainant therefore argues that there is an overwhelming public interest in the information they requested being disclosed.

The council's arguments

25. The council outlined why responding to the request would create a manifestly unreasonable burden upon it in its response and its review response. The council was clear of its reasons for refusing the request in these documents, and therefore the Commissioner has not found it necessary to contact the council further regarding the application of the exception during his investigation.
26. The council argues that the breadth of the request, and the time period over which it covers is significant.
27. It argues that its initial searches identified over 2000 emails, many of which included attachments of documents of multiple pages. It considered, however, that as a result of the history of the site, the number of documents it would hold across the council would be significantly more than this.
28. It did not provide the complainant with an estimate of the cost of considering this information, however 2000 documents alone, at one minute per page, would exceed 33 hours to respond, and the Commissioner notes that this would not take into account that the council had identified that a number of attachments and other documents were attached to some of the emails.
29. The council argues that many of its departments have been involved in addressing the situation with the landslide. It argues that the departments which have had involvement include Legal Services, Highways, Insurance Team, Finance Team, Place Services and the Chief Executives office. It argues that a number of different officers have been involved.
30. The council also highlighted that the documents would be likely to include information which would be subject to exceptions such as information subject to legal professional privilege, internal communications and personal data. It noted that the time taken to

consider the applicability of exceptions can be taken into account when considering requests under the EIR.

31. In conclusion, the council argued that carrying out the tasks noted above in order to respond to the request would greatly exceed the 18 hours set under FOIA. As a result, it argues that responding would create a disproportionate burden on its resources in terms of time and costs, as well as an unjustified level of distress, disruption and irritation on the departments involved in the matter. It therefore concluded that the request is manifestly unreasonable under the EIR.

The Commissioner's analysis

32. The Commissioner must determine whether the council has provided a reasonable estimate of the work likely to be required to respond to the request. The estimate must be sensible, realistic and supported by cogent evidence. It should also be based on the quickest method of gathering the information requested, considering how the public authority actually holds its records.
33. The Commissioner notes that the request is broad and covers the entire period of the land slip, from December 2022 to the time of the request. He also notes that the scope of the request is detailed in its scope, and that it covers a significant number of different types of information which might be held in association with the site.
34. The council has [published information](#) on its webpage providing a detailed background and explanation of the difficulties it has had in addressing the issue. Due to the nature of the incident and the complexity of addressing and resolving it, the Commissioner is satisfied both that a large number of different departments will have been involved, and that much more information is likely to be held by it falling within the scope of the request.
35. Furthermore, he accepts the council's argument that there is likely to be exempt information scattered throughout that information due to the ongoing discussions which the council is in with the owners of the land adjacent to the road, and the potential for legal action occurring. This might include, for instance, information subject to Regulation 12(5)(b) as it relates to the potential for litigation or enforcement action, as well as personal data.
36. The Commissioner is therefore satisfied that responding to the request would clearly exceed the 18-hour limit set by section 12 of FOIA by some degree.

37. His decision is therefore that Regulation 12(4)(b) is engaged by the request. He must therefore carry out the public interest test required by Regulation 12(1) of the EIR.
38. The test is whether, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in the information being disclosed. If it does, then the information can be withheld from disclosure.
39. When carrying out this test, the Commissioner must also take into account that Regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure.

Public interest test

The public interest in the information being disclosed

40. The Commissioner notes that there is always a general public interest in public authorities being open and transparent about their actions in order that the public can understand the reasons why the council has made the decisions it has.
41. The issue in in this case involves disruption to a section of a main A road, which has been either closed, or restrictions put into place, for a period of years. The council has not yet indicated a timeline by which the road will be fully reopened.
42. The Commissioner therefore accepts the complainant's argument that there is a very strong public interest in the information being disclosed. The road closure will have affected a lot of people over a significant period of time, and the local community is likely to have been considerably inconvenienced. It will also affect urgent traffic, emergency vehicles, as well as increasing the costs of local businesses in having to use a diversion instead of the closed section of road or delays due to the restrictions. The council's website also indicates that it is not offering any compensation to those affected.
43. There is therefore a significant weight in information being disclosed which demonstrates what actions the council has taken to date to try to repair and reopen the road.
44. The council's size can be taken into account as relevant factor in determining the level of burden responding to the request would create. The council is a large council. Its [statement of accounts for 2021-22](#) states that at the end of March 2022, it employed 4,799 full time

equivalents (5,364 people), excluding school-based employees, on both full and part time contracts.

The public interest in the exception being maintained

45. The Commissioner notes that the council has continued to publish updates on the issues with the road on a webpage it has specifically set up to inform the community. The last [update](#) was published in January 2025, outlining the issues which it is having with the landowners allowing access to their land to assess it and make it safe. It also highlights legal action it is involved in in trying to resolve these issues.
46. The council described how responding to the requests would require it to carry out a substantial amount of work, creating a significant burden on its resources. It has fully explained why this would be the case.
47. There is a strong public interest in protecting the limited resources of public authorities against requests which would create a significant burden upon them and affect their ability to carry out their primary functions.

The balance of the public interest

48. The Commissioner recognises that the central public interest in the exception being maintained relates to preserving the council's resources. It is not in the public interest to require an authority to respond to a disproportionate request which places a significant burden on it.
49. Even though disclosing the information would significantly increase transparency over the issue involved, and allow the public a greater ability to scrutinise the council's actions, this may be outweighed where it would cause such a burden on the council to the extent that this would cause significant disruption and affect its ability to carry out its other functions.
50. The Commissioner notes that the council is a large council and that it would have the necessary resources to respond to the requests should it be required to do so. However, providing a response to an EIR request which greatly exceeds the appropriate limit would require a significant diversion of the council's resources, and would affect its ability to carry out its other functions.
51. The Commissioner has taken into account that there is a clear public interest in ensuring transparency over the issue, and in allowing the public access to information which will allow it to be satisfied that the council is taking appropriate and timely steps to reopen the road. However, the council is addressing this need to a large degree by

publishing regular and detailed updates on the actions it is taking relating to the site. It has published information on what the issues are, why they are occurring, and what it intends to do about this, and has a set webpage which is updated as the issue moves forward. This has significantly reduced the public interest in the council carrying out the work in order to respond to the complainant's request.

52. In conclusion, the Commissioner notes the public value in allowing access to the information. However, taking into consideration the significant burden that responding to the request would place on the council, balanced against the information which is already published relating to its actions in trying to repair the road, the Commissioner has decided that the public interest in the exception being maintained outweighs the public interest in disclosure in this case.
53. 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).

54. As highlighted above, in this case the Commissioner's view is that the balance of the public interest clearly favours the exception being maintained in this case. Therefore, the Commissioner's decision, whilst informed by the presumption provided for in Regulation 12(2), is that Regulation 12(4)(b) was applied correctly.
55. The Commissioner's decision is therefore that the council was able to refuse to respond to the complainant's request further under Regulation 12(4)(b) of the EIR.

Right of appeal

56. 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

57. 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.
58. 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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