

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

**Decision notice**

**Date:** 13 November 2017

**Public Authority:** Suffolk County Council  
**Address:** Endeavour House  
Russell Road  
Ipswich  
Suffolk  
IP1 2BX

**Decision (including any steps ordered)**

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1. The complainant has requested information held by Suffolk County Council ("the Council") on a potential bypass for Sudbury. The complainant requested correspondence between various parties including the consultants charged with proposing the bypass route. The Council provided some information to the complainant and initially stated the majority of information was being withheld under regulations 12(4)(d) and (e) of the EIR; later amending its response to refuse the request as manifestly unreasonable under regulation 12(4)(b).
2. The Commissioner's decision is that the Council has failed to demonstrate that complying with the request would be manifestly unreasonable in all the circumstances of the case.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Identify the information it holds within the scope of the request; and
  - Issue a fresh response that does not rely on regulation 12(4)(b).
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court

pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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5. On 28 September 2016, the complainant wrote to the Council and requested information in the following terms:

*"The period for which I am requesting the information is from 1 January 2015 to the present.*

- 1. Please supply all information held by your Council concerning the work of your consultants WSP Parsons Brinkerhoff on a possible bypass/relief road for Sudbury, Suffolk, in particular all correspondence or exchange of documents between [name redacted] and/or officials of his department and [name redacted] and/or any other employee or associate of WSP Parsons Brinkerhoff.*
  - 2. Will you please supply a copy of the draft business plan for a proposed Sudbury bypass or relief road which was submitted to the Department for Transport in or around March 2016 as well as copies of all communications in the period since January 2014 relating to the possible bypass/relief road between [name redacted] and/or officials of his department on the one hand, and officials of the Department for Transport on the other.*
  - 3. Finally, will you please provide copies of all correspondence relating to the possible bypass/relief road between [name redacted] and/or officials of his department and relevant persons including the MP for South Suffolk, Mr James Cartlidge, councillors and officials at Suffolk County Council, Essex County Council, Babergh and Braintree District Councils, Sudbury Town Council, the New Anglia Local Enterprise Partnership as well as local land-owners and residents."*
6. The Council responded on 2 November 2016. It provided a redacted copy of an early draft of the WSP business case but withholding any other information it held under regulations 12(4)(d), 12(4)(e) and 13 of the EIR. For regulation 12(4)(d) the Council explained that this was applicable to draft documents and as no final version existed (at the time of the request) it was withholding information still in the course of completion. For regulation 12(4)(e) the Council argued there was a need for a safe space to allow for discussions on the proposals. Regulation 13 was applied to withhold personal information.

7. The complainant requested an internal review on 7 November 2016 raising several areas of concern with the response from the Council including:
  - That the Sudbury Bypass Review of Potential Alignments document was incomplete and the information disclosed to him referred to a full report on environmental findings as well as instructions from the Council to WSP which had not been provided;
  - That the review of Potential Alignments and the Bypass Business Case had been sent to the Department for Transport and were not therefore still drafts;
  - That the Council had not identified all the information it was withholding as unfinished material;
  - That communications with third parties are neither unfinished material or internal communications so should be provided;
  - That it was unclear if any documents had been entirely withheld under regulation 13; and
  - That it was possible some information might be caught by the FOIA.
8. Following an internal review the Council wrote to the complainant on 6 December 2016. It disclosed a further document (Sudbury Bypass B Case) which had been erroneously withheld as an unfinished document. At this stage the Council clarified it considered the information was solely environmental and the EIR was the correct access regime to consider the request under.
9. The Council also sought to introduce the regulation 12(4)(b) exception on the basis that it would be disproportionate to respond given the time required and the relative importance of the issues. At the same time the Council reiterated that no final versions of documents existed so the regulation 12(4)(d) exception was still correctly applied and regulation 12(4)(e) applied to allow the Council a safe space to discuss the proposals. The Council did not explain the extent to which regulation 13 applied.

## **Scope of the case**

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10. The complainant contacted the Commissioner on 2 March 2017 to complain about the way his request for information had been handled.

11. The Commissioner initially wrote to the Council asking for clarification of what information was held and for further detail on what of this information was being withheld under regulations 12(4)(d) and (e) of the EIR. During the course of her investigation the complainant informed the Commissioner he was satisfied with regulation 13 being used to redact names from any relevant documents and this was also made clear to the Council.
12. On 1 September 2017 the Council sent some additional documents, containing relevant information, to the complainant. These consisted of a consulting agreement, a review of potential alignments, a work sheet showing work carried out by the consultants and a draft environmental studies and survey report. The complainant accepted that the review of alignments document contained information relevant to his request but disputed that the other documents were relevant. The Commissioner considered that the consulting agreement also contained information within the scope of the request as it showed the Council undertook a consultation following the original traffic flow analysis several years before that suggested a different route for the bypass. Similarly the draft environmental study and survey report contained relevant information to the request but it was not clear what relevance the work sheet had.
13. At the same time as disclosing this information to the complainant, the Council also responded to the Commissioner and confirmed that these unredacted documents had been released as it had been determined that they could now be disclosed due to the time that had passed. The Council did not provide any further detail on its decision to withhold information under the exceptions at regulation 12(4)(d) and (e) but stated it was now solely seeking to rely on regulation 12(4)(b) as it had already spent in excess of 25 hours providing information to date.
14. The Commissioner therefore considers the scope of her investigation to be to determine if the Council has correctly refused the request on the basis of regulation 12(4)(b).

## **Background**

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15. In 2015 the complainant became aware that the Council was going to employ consultants, WSP, to look into the feasibility of a bypass around the town of Sudbury, specifically to the west of the town. The complainant requested information from the Department for Transport on the proposed new study and was informed that the Council's contractors (Kier) would carry out the work in conjunction with their consulting engineers. A draft business case was produced by WSP in October 2015 proposing a route for the bypass to the west of the town.

## Applicable legislation

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16. As the request is for information relating to a proposed bypass, the Commissioner considers that the withheld information is caught by the definition of environmental information in regulation 2(1)(c)<sup>1</sup>. The Council was therefore correct to handle the request under the terms of the EIR.

## Reasons for decision

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17. 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.
18. The EIR do not provide a definition of "*manifestly unreasonable*". The Commissioner considers that in order for a request to be considered "*manifestly unreasonable*", there must be a clear and obvious unreasonable element to the request.
19. A request can be manifestly unreasonable for two reasons: where the request is vexatious and where the public authority would incur unreasonable costs or an unreasonable diversion of resources. The Council has sought to rely on the exception on the grounds of the costs of compliance.
20. Unlike the Freedom of Information Act 2000 (FOIA), there is no appropriate cost limit under the EIR and the application of the exception should be based on a consideration of the proportionality of the cost with respect to the request and the wider value in the requested information being made available.
21. The Commissioner considers the appropriate limit set for requests falling under the FOIA to be a useful starting point when determining whether a request is manifestly unreasonable under the EIR.
22. The appropriate limit is defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Regulations) as £600 for Central Government departments and £450 for all other public authorities.

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<sup>1</sup> <http://www.legislation.gov.uk/uksi/2004/3391/regulation/2/made>

23. The Regulations state that where the cost of complying lies in the staff time required to comply with the request, public authorities should apply a flat rate of £25 per hour, equivalent to more than 24 hours work for Central Government departments and 18 hours for other public authorities.
24. However, while the Commissioner will take the appropriate limit into account, it is not determinative for the purposes of the exception. The Commissioner must make her decision based on whether the cost of complying with the request is 'clearly' or 'obviously' disproportionate to the public interest in disclosure.

*The Council's position*

25. The Council confirmed to the Commissioner that complying with the request would take an estimated 25.56 hours.
26. The Commissioner had asked the Council to provide a detailed estimate of the breakdown of the time required to locate, retrieve and extract information relevant to the request. The Council broke its estimate down into the time it had already spent dealing with the request and the additional time needed if it were to conduct further searches and work.
27. The Council stated the time taken to deal with the request so far, which included the time it had spent responding to enquiries from the Commissioner, was based on two Transport Strategy officers and the FOI team's time. It stated it initially spent 4 hours searching files for documents and reading reports and followed this up with another 1.5 hours work. Similarly searching emails for correspondence, documents and email trails initially required 1.5 hours work and a further 1 hour later on in dealing with the request and the Commissioner's enquiries. The Council also considered it relevant to include the time taken to meet and discuss the response and agree a signed-off response was relevant to take into account and this amounted to 3 hours.
28. For the time the Council still estimated it would take to fully locate, retrieve and extract relevant information; the Council estimated it would need the majority of time to search emails. This would require searching the project email folder and searching against Sudbury more generally as work was being undertaken on several Sudbury projects at the time by the same consultants. The Council have estimated this to be in excess of 317 emails and has broken down the time needed to go through these as follows:
  - Searching files = 0.5 hours

- Reading emails and email trails – 2 minutes per email = 10.56 hours based on 317 emails which may contain references to more than one Sudbury project
  - Redactions – approximately 2 hours
  - EIR process and sign-off – 3 people = 1.5 hours.
29. In total the Council estimates it would require 25.56 hours factoring in time taken already and time required to fully comply with the request.
30. The Council explained that it considered complying with the request further would be disproportionate and manifestly unreasonable against the officer time taken. The Council also alluded to the fact it would be disproportionate given the amount of work for the requester's own interest given that it would impact on the relevant departments ability to perform its functions due to the diversion of resources.

### **The Commissioner's position**

31. In considering whether the Council is entitled to rely on the exception at regulation 12(4)(b), the Commissioner has taken note of previous decision notices, Tribunal decisions and her own guidance.
32. The explanations provided to the Commissioner in the Council's submission have not persuaded the Commissioner that responding to the request would incur a manifestly unreasonable cost to the Council.
33. For the purposes of her decisions, the Commissioner does not require a public authority to provide a precise calculation of the costs of complying with a request, instead only an estimate is required. However, it must be a reasonable estimate.
34. Whilst regulation 12(4)(b) of the EIR differs from section 12 of the FOIA, the Commissioner considers that estimates provided regarding regulation 12(4)(b) should contain the same level of detail as those submitted regarding section 12 of the FOIA.
35. The Commissioner has not been provided with any evidence for why the average time has been calculated as it has and will often expect an explanation for estimates that are provided. However, the Commissioner acknowledges the Council has stated that there may be several mentions of Sudbury which refer to different projects in email trails and this will take some time. The Commissioner does not necessarily dispute the estimates provided for searching files and reading emails to locate relevant information within the scope of the request, even though no indication of the proportion of emails that require more time has been



provided. The estimates given by the Council do not seem to be excessive.

36. However, the Commissioner has some concerns that the Council considers the time it has spent in meetings discussing its responses and the time it has spent on its internal EIR processes are factors that can be considered when deciding if it would be disproportionate in terms of time and effort to respond to the request. When considering if it would be a disproportionate use of a public authority's resources the Commissioner is generally looking to ascertain if complying fully with the request would divert from other functions i.e. a member of staff would be unable to perform their normal role due to being diverted to deal with this request. It is therefore not reasonable to include the time spent interacting with the Commissioner by the FOI team, the time required to discuss the request in meetings or to go through the EIR process as these are all activities performed by an FOI team, in what the Commissioner can only conclude, is part of their normal functions.
37. The Commissioner is not satisfied that the Council has provided convincing or persuasive arguments that the estimate of the time and costs which would be incurred by complying with the request is unreasonable.
38. The complainant has provided clear and compelling evidence that the proposed bypass route is of significant local interest and has been controversial amongst groups of residents, suggesting there is a significant public interest in information on the proposed route of the Sudbury bypass. Although the Commissioner recognises there has been and will be some time constraints placed on the Council by complying with the request she does not consider this to be excessive or disproportionate, especially in light of the public interest in the disclosure of information on this issue.
39. The Commissioner recognises that the Council may consider it should have been given further opportunities to explain its position. However, she would argue that it was made clear to the Council that it was to provide its full and final submissions regarding the application of regulation 12(4)(b) given the previous correspondence that had taken place with the Council on this issue and the need to not engage in any further protracted correspondence on this issue.
40. Taking all of the above factors into account, the Council's submission has not persuaded the Commissioner that the request is manifestly unreasonable and, therefore, her decision is that the exception under regulation 12(4)(b) is not engaged.



41. The Commissioner requires the Council to issue a fresh response to the request that does not rely on regulation 12(4)(b).

## Right of appeal

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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: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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.

**Signed .....**

**Jill Hulley**  
**Senior Case Officer**  
**Information Commissioner's Office**  
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**Water Lane**  
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