

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

Date: 3 April 2019

Public Authority: Huntingdonshire District Council
Address: Pathfinder House
St. Marys Street
Huntingdon
Cambridgeshire
PE29 3TN

Decision (including any steps ordered)

1. The complainant requested a number of items of correspondence which relate to a Planning grievance which he has. Huntingdonshire District Council ("the Council") handled the request under the FOIA and refused it under section 14(1) (vexatious requests).
2. The Commissioner's decision is that the Council should have dealt with the request under the EIR, but that it was entitled to rely on Regulation 12(4)(b) (manifestly unreasonable) to refuse the request.
3. The Commissioner does not require the Council to take any further steps.

Request and response

4. On 4 July 2018 the complainant resent, to the Council, a letter he had previously sent in 2008, which set out 34 separate categories of information which he required copies of. The Commissioner considers that it would serve no useful purpose to repeat the request verbatim here, but in summary, it sought internal and external correspondence, from the Council, in relation to a previous planning enforcement case and subsequent referral to the Local Government Ombudsman.

5. The Council treated the correspondence as a fresh request and on 2 August 2018, refused the request, citing Section 14(2) of the FOIA (Repeated Request).
6. The complainant requested an internal review on 3 August 2018. The Council sent the outcome of its internal review on 1 October 2018. It revised its position slightly in that it now also applied Section 14(1) of the FOIA (Vexatious Request).

Scope of the case

7. The complainant contacted the Commissioner on 10 September 2018 to complain about the way his request for information had been handled. At that point, the Council had not issued its internal review.
8. Following the outcome of the review, the complainant made further representations to the Commissioner on 1 October 2018 and asked her to look into the substantive matters raised.
9. At the outset of her investigation, the Commissioner informed the Council that the terms of the request were such that it was likely that the majority of the information which would come within scope would be environmental in nature. She therefore felt that the EIR was likely to be the appropriate access regime and invited the Council to tailor its arguments towards the application of Regulation 12(4)(b) of the EIR (Manifestly Unreasonable)
10. The Commissioner considers that the scope of her investigation is to determine whether the request was Manifestly Unreasonable and, if it is, whether the public interest favours maintaining the exception.
11. For the avoidance of doubt, the Commissioner has not investigated the extent of the information held by the Council, as there is no requirement to do so in order to determine whether the exception is, or is not, engaged.

Reasons for decision

Is the information environmental?

12. 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);*
13. The Commissioner has not seen the requested information but, as it is clear from the wording of the request that it is information relating to Planning and Planning Enforcement, she believes that it is likely to be information about "measures" affecting the elements of the environment. For procedural reasons, she has therefore assessed this case under the EIR.

Was the Request Manifestly Unreasonable?

14. Regulation 5(1) states that: *"a public authority that holds environmental information shall make it available on request."*
15. Regulation 12 of the EIR states that:
- "(1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if—*
- (a) an exception to disclosure applies under paragraphs (4) or (5); and*

(b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

(2) A public authority shall apply a presumption in favour of disclosure.

(4) 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;”

16. The Commissioner considers that a request can be manifestly unreasonable for two reasons: firstly, if it is vexatious and secondly where it would incur unreasonable costs for a public authority or an unreasonable diversion of resources.
17. The Council’s arguments were mainly related to the cost burden of dealing with the request. Whilst it did make some reference to its history of dealings with the complainant, it did not provide a substantive evidence base to support a conclusion that the request was vexatious. The Commissioner has therefore focused on whether the cost of answering the request would make it manifestly unreasonable.
18. The EIR do not provide a definition of what constitutes an unreasonable cost. This is in contrast to section 12 of the FOI Act under which a public authority can refuse to comply with a request if it estimates that the cost of compliance would exceed the “appropriate limit”. This 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.
19. Although the Regulations are not directly applicable to the EIR, in the Commissioner’s view they can provide a useful point of reference when public authorities argue that complying with a request would incur an unreasonable cost and therefore could be refused on the basis of regulation 12(4)(b).
20. The Regulations allow a public authority to charge the following activities at a flat rate of £25 per hour of staff time:
 - Determining whether the information is held;
 - Locating the information, or a document which may contain the information;

- Retrieving the information, or a document which may contain the information; and
 - Extracting the information from a document containing it.
21. The Council explained that many of the documents which the complainant had requested (or which would have fallen within the scope of the request) would, if they were still held, be contained within its legacy systems and difficult to recover.
22. The Council noted that the vast majority of the information would be over 10 years old and not necessarily contained within its various Planning files. Much of the information, it argued, would need to be sourced from backup files:

"These backups are kept on data tapes which are known to degrade severely after a number of years and are somewhat a last resort. It is highly possible if you tried to recover a large amount of data from them you would find a percentage of this to be corrupt. Should you be recovering a system for example from that long ago there's a high possibility the corruption would cause the system not to function correctly.

"The legacy backups are stored on a media no longer in use by any of the production systems. To attempt to review this data we would have to commission a backup tape library, server and applications from the archive to be able to even interrogate the tapes to see if the required data is consistent. A separate exercise to recover the entire mailstore and potentially server to be able to mount it would need to follow, if we could.

"The e-mail server that hosted the email data stores in 2005 went out of support a number of years ago and was replaced twice since. I don't believe there are any remaining backup of this legacy system/mailstores. All mailboxes that were being retained would have been migrated to the new mailstores. However no tracking information would have been retained. If the user had left before this time their e-mail box would have been removed and archived in the archive system in line with our 'Staff Leavers' policy.

"We didn't have an email archive system in place until circa late 2005 early 2006, so until this was implemented and fully configured there was no journaling done on e-mail. So any e-mail could have been deleted from the user mailboxes and we would have no record of it. Or if a user was deleted their mailbox would have been too.

"The Archive system itself was replaced 2 years ago. It would take a great deal of effort and weeks of time to interrogate that system

and attempt to export any remaining data from any mailboxes providing they even remain in the system. Also as it's a legacy system we no longer have a support contract for it, so if we were to encounter any issues with data retrieval we would have no supplier support to resolve it.

23. The Council went on to explain that its understanding was that the way the archived data had been stored was such that they could not restore individual mailboxes and would therefore need to restore some 600 separate mailboxes to access the specific information required.
24. The Council's IT department stated that it could not provide a reliable estimate for the amount of time needed to perform such a task. This was because they had never attempted anything similar before and did not have the in-house expertise to do it. The Council could not be sure what issues were likely to be encountered because of the age of the tapes – although it considered there to be a high degree of likelihood that many of the files would now be corrupted. The time taken to restore the system would depend on how many such issues were encountered and how long it took to deal with them.
25. The Council pointed out that, in order to carry out such a task, it would have to hire specialist external contractors who were likely to charge between £500-£1,000 per day.
26. Once the systems had been restored, each of the individual mailboxes would then need to be searched for information within the scope of the request. The Council's estimate for the time needed to carry out this task would be 30 minutes per mailbox. Whilst the Commissioner considers that some could be searched more quickly than this, she also recognises that some would take longer and therefore an average time of 30 minutes per mailbox is reasonable.
27. The Commissioner notes that, even if the Council were able to isolate only the mailboxes of the individuals named in the request, that would still amount to 37 mailboxes – equating to 18.5 hours of staff time – just to establish the parameters of the information which was held within those mailboxes. This does not take into account any information held in planning or other files – or time spent restoring the mailboxes.
28. The Commissioner also considers that, having located and extracted the requested information, it is likely that the Council would then have to consider whether any other exceptions applied to the information within scope. In particular, she notes that a considerable amount of the information is likely to be the complainant's own personal data (and therefore excepted from disclosure under the EIR) and that other information has been supplied by external parties who would need to be

consulted before disclosure. The amount of time this would take would depend on the amount of information which was located from searches, but the Commissioner considers that this process is likely to add considerably to the time needed to comply with the request.

29. The complainant believes that all the information should be contained within a particular Planning enforcement file. The Commissioner offers no opinion as to whether the information "should" be contained within a single file, but the Council has informed her that, as a matter of fact, it is not. The Commissioner would therefore expect the Council to carry out appropriate searches to satisfy itself that it had located all information within the scope of the request before issuing any response.
30. The Commissioner considers that the Council has provided sufficient evidence to demonstrate that complying with the request would take in excess of 25 hours and would be particularly costly. Bearing in mind that searching the backup tapes is not certain of being successful and as much of the information located would be excepted from disclosure under EIR in any case, she considers the request to be manifestly unreasonable and thus the exception at Regulation 12(4)(b) is engaged.

Balance of public interest

31. The complainant has argued that the information he has requested should be publicly available. The Commissioner also recognises that there is an inherent value in organisations which spend public money being transparent and accountable for how that money is spent.
32. However, having accepted the significant burden that would be imposed upon the Council if it were required to comply with this request, the Commissioner would need to see a compelling public interest to order disclosure.
33. All the information within scope relates to a bitter and long-running dispute that the complainant has with the Council and others in relation to a dispute about Planning and inheritance. The Council has also noted that, even if the complainant were to find evidence of the maladministration he is convinced has taken place, the time limit for requesting a judicial review has expired. The Commissioner is happy to accept that such matters are of paramount importance to the complainant and his wife, but she also considers that such matters are of negligible interest to the wider public.
34. Indeed, the Commissioner considers that there is a strong public interest in the Council being able to preserve its resources for projects bringing wider benefits to the public of Huntingdonshire, instead of

expending considerable resources attempting to resolve a private grievance.

35. The Commissioner's conclusion is that the balance of the public interest lies in maintaining the exception and therefore the Council was entitled to rely on Regulation 12(4)(b) to refuse the request.

Right of appeal

36. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

37. 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.
38. 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

Ben Tomes
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