

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 5 January 2015

Public Authority: Cornwall Council

Address: County Hall
Truro
TR1 3AY

Decision (including any steps ordered)

1. The complainant has requested recorded information concerning works carried out on road drains associated with the flooding of the complainant's property.
2. The Commissioner's decision is that Cornwall Council has properly applied Regulation 12(4)(b) of the EIR to two of the complainant's requests on the grounds that they are manifestly unreasonable.
3. The Commissioner does not require the Council to take any further action in this matter.

Request and response

4. The complainant has made two information requests to CORMAC Solutions Limited ("CORMAC") – a company wholly owned by Cornwall Council. The first request was made on 13 December 2013 and the second on 2 January 2014:

On 13 December 2013 the complainant asked CORMAC to provide ..."the CCTV report relating to request action ref 450533 dated 22 March 2010."

On 2 January 2014 the complainant asked CORMAC to provide ..."a copy Cormacs detailed works/maintenance report that was done after the CCTV report Action referred 450533 and 480890 dd 12 January 2011 Email 101715382 dated 15 April showed there was a blocked drain."

5. CORMAC responded to the complainant's requests on 10 January 2014. It advised the complainant that her requests were considered to be manifestly unreasonable and therefore subject to the exception to disclosure provided by Regulation 12(4)(b) of the EIR.
6. On 13 January the complainant asked CORMAC to carry out an internal review of its decision to apply Regulation 12(4)(b) to her requests.
7. On 31 January CORMAC wrote to the complainant having completed its internal review. CORMAC determined that it should uphold its decision to apply Regulation 12(4)(b) on the basis that significant resources had been allocated to the complainant's previous requests and that the appropriate limit, set by the Freedom of information Act, had been exceeded.
8. CORMAC's reviewer stated that, 'CORMAC have done all they can, to provide you with the information you have requested through five Environmental Information Regulation requests you have submitted and no additional information is available, which you have not already received'.

Scope of the case

9. The complainant contacted the Commissioner 28 July 2014 to complain about the way her request for information had been handled.
10. The focus of the Commissioner's investigation of this complaint has been to determine whether Cornwall Council / CORMAC Solutions Limited is entitled to rely on Regulation 12(4)(b) of the EIR and thereby refuse to comply with the complainant's requests.

Reasons for decision

Is the requested information 'environmental information'?

11. Regulation 2(1) of the EIR defines what constitutes 'environmental information'. Subsections (a) to (c) state –

'(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 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) and (b) as well as measures or activities designed to protect those elements.'

16. The Commissioner considers that the phrase 'any information...on' should be interpreted widely in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact.
17. In the Commissioner's opinion the information sought by the complainant is likely to constitute environmental information. The information relates to work carried out in respect of flooding which affected the complainant's property. He therefore finds that the information falls to be considered under the EIR.

Regulation 12(4)(b) – where the request is manifestly unreasonable

18. 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.
19. There is no definition of 'manifestly unreasonable' under the EIR. The Commissioner considers that 'manifestly' implies that the request should 'obviously' or 'clearly' be unreasonable.
20. A request can be manifestly unreasonable for two reasons: Firstly if it is vexatious and secondly where the public authority would incur unreasonable costs or where there would be an unreasonable diversion of resources.
21. There is no definition of the term "vexatious" in the Freedom of Information Act, however the issue of vexatious requests has been considered by the Upper Tribunal in the case of *The Information Commissioner and Devon County Council v Mr Alan Dransfield (GIA/3037/2011)*. In the Dransfield case the Tribunal concluded that the term could be defined as "manifestly unjustified, inappropriate or improper use of formal procedure." The Tribunal identified four factors likely to be relevant in vexatious requests:
 - The burden imposed by the request on the public authority and its staff
 - The motive of the requestor

- Harassment or distress caused to staff
 - The value or serious purpose of the request.
22. The Upper Tribunal's decision established the concepts of "proportionality" and "justification" as being central to any consideration of whether a request for information is vexatious.
 23. The key to determining whether a request is vexatious is a consideration of whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear it is necessary to weigh the impact of the request on the public authority against the purpose and value of the request. To do this a public authority must be permitted to take into account wider factors associated with the request, such as its background and history.
 24. In this case the Council asserts that the request is vexatious and, when considered alongside the complainant's previous requests, it has resulted in significant expenditure of resources.
 25. To illustrate the effect of the complainant's requests on the Council, the Council provided the Commissioner with a spreadsheet documenting the actions it has taken since the complainant's property was flooded in December 2012.
 26. It is clear from the spreadsheet that the complainant has initiated significant correspondence about the flooding at her property. This correspondence was sent to individual councillors and to officers of the Council and it is also clear to the Commissioner that the Council has always responded to the complainant's concerns, although not necessarily to her satisfaction.
 27. The complainant has also made several requests for information. Some of these were dealt with as part of the Council's normal business practice and four requests were dealt with under the Environmental Information Regulation 2004 ("the EIR"). The EIR requests were given the following reference numbers: 101000597724, 101000693187, 101001060138 and 101001083289.
 28. The complainant was not satisfied with the Council's responses to two of her EIR requests and consequently she asked the Council to undertake internal reviews of its handling of those requests.
 29. In all, the Council has been required to conduct two internal reviews in relation to the information requests and to exhaust its internal complaints procedure on a further two occasions in respect of the Council's responses to the flooding incident.

30. Additionally, the complainant has referred the Council to the Local Government Ombudsman on two occasions. These complaints have required the Council to provide explanations of its actions and to provide the LGO with 416 pages of information associated with the complainant's matter.
31. The Council has assured the Commissioner that it has provided the complainant with all the information it holds which is relevant to the flooding of her property and to her complaints and requests for information. In providing this information the Council estimates that it has incurred costs of approximately £1300.
32. In order to meet the requirements of the complainant's information requests it has been necessary for the Council search, locate and extract information from a number of different sources. These include the Council's POEMS and Camino systems, MDW Limited's RMS system and to the Council's paper-based archives.
33. To substantiate its estimate the Council has provided the Commissioner with a breakdown of the time and costs of the activities it has undertaken in providing the complainant with information.
34. The Commissioner has carefully considered the Council's estimate: He finds the estimate to be entirely reasonable and the resulting aggregated cost of £1300 to be significantly greater than the appropriate limit provided the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004¹.
35. The Commissioner has decided that the requests made by the complainant on 13 December 2013 and 2 January 2014 must be considered in the context of her other requests for information and her complaints about the Council's service. This is because they all concern the flooding to her property and appear to be the complainant's single-minded pursuit to apportion some responsibility on the Council's part for the flooding to her property.
36. Having made this decision, the Commissioner has no difficulty in concluding that the complainant's requests amount to a significant burden on the Council in terms of the resources it has devoted to dealing with the complainant's matter. It is clear to the Commissioner that the complainant's requests considered in this notice have become disproportionate and unreasonable.

¹ <http://legislation.data.gov.uk/uksi/2004/3244/made/data.htm?wrap=true>

37. He finds that the complainant's pursuit of information from the Council has now passed the point where a reasonable person would conclude enough is enough. To persist in seeking further information from the Council, where it has already confirmed to the complainant that she has been given all the information it holds, must be considered as being vexatious.
38. On the basis that the requests are vexatious; and combining that with the level of resources already spent by the Council in dealing with this matter, the Commissioner's decision is that the Council has properly determined that the complainant's requests are manifestly unreasonable.

The public interest test

39. The Commissioner has gone on to consider whether the balance of the public interest in maintaining the exception outweighs the public interest in disclosing further information.
40. The Commissioner will always give weight to factors which favour the disclosure of information which would increase the public's understanding of the actions taken by the Council and of the processes by which it makes its decisions. Such disclosure of information increases transparency and provides accountability of public authorities.
41. In this case the Council has assured the Commissioner that it holds no further information about the flooding of the complainant's property or the road drain, other than the information it has already disclosed to the complainant. In the Commissioner's opinion the Council's provision of this information has already satisfied any general public interest the public would have in this matter.
42. In the Commissioner's opinion there is little or no public value to be had by asking the Council to spend further time or expense in responding to the complainant's requests, which are unlikely to satisfy her on-going scrutiny of the Council.
43. The Commissioner recognises the legitimate wider public interest in knowing what the Council has done in respect of the road drains. Nevertheless he finds that the information already disclosed by the Council has satisfied that public interest.
44. Taking all the above into consideration, the Commissioner has decided that Regulation 12(4)(b) of the EIR has been properly applied by the Council.

Right of appeal

12. 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

13. 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.
14. 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

Andrew White
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