

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 7 September 2022

**Public Authority:** Norfolk County Council  
**Address:** County Hall  
Martineau Lane  
Norwich  
Norfolk  
NR1 2DH

#### **Decision (including any steps ordered)**

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1. The complainant requested from Norfolk County Council ("the Council") information relating to the 'Norwich Western Link Road' project. The Council withheld the requested information under regulation 12(4)(b) (manifestly unreasonable requests) of the EIR. During the course of the Commissioner's investigation, the Council advised the Commissioner that it considered that regulation 12(4)(b) to have been incorrectly applied.
2. The Commissioner's decision is that the Council was not entitled to rely upon regulation 12(4)(b).
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
  - Issue a fresh response to the complainant that does not rely upon regulation 12(4)(b).
4. The Council 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 14 August 2020, the complainant wrote to the Council and made the following two requests:
  - 1. All emails, letters, reports and minutes of meetings in relation to Norfolk County Council's engagement with Natural England on issues relating to the Norwich Western Link Road project that has come into existence between 1st, June 2019 and the present date.**
  - 2. All emails, letters, reports and minutes of meetings in relation to Norfolk County Council's engagement with Anglian Water and or Department of Environment on issues relating to the Norwich Western Link Road project that has come into existence between 1st, June 2019 and the present date.**
6. The Council responded on 10 December 2020. It refused request 1 under regulation 12(4)(b), and refused request 2 on the basis that it did not hold the information.
7. Following an internal review the Council wrote to the complainant on 22 April 2021. It maintained its original position.

## Scope of the case

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8. The complainant contacted the Commissioner to complain about the way his request for information had been handled, and specifically that the Council was not entitled to withhold information under regulation 12(4)(b) (in respect of request 1).
9. The scope of this case and of the following analysis is whether the Council was entitled to rely upon regulation 12(4)(b) to withhold the requested information.

## Reasons for decision

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

10. 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;**

11. The Commissioner has issued public guidance<sup>1</sup> 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. In this case the council originally considered that circumstance 2) was applicable.
12. During the course of investigation, the Council informed the Commissioner that it considered the original application of regulation 12(4)(b) to have been incorrect. This is because the Council considers that the request in this case (Council reference ENQ-423438-X7B1D1) seeks information that had previously been sought by an earlier request made approximately three months earlier (Council reference ENQ-406885-Y5M2K7) – to which the Council disclosed information. Due to the impact upon the Council from the Covid-19 pandemics, the connection between the requests was not realised until present.
13. Having considered the Council's position, it is evident to the Commissioner that the application of regulation 12(4)(b) was incorrect, and that the Council is therefore not entitled to rely upon it.

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<sup>1</sup> <https://ico.org.uk/for-organisations/guide-to-the-environmental-information-regulations/refusing-a-request/#when-can-we-refuse-a-request-for-environmental-information-3>

## Right of appeal

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14. 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](mailto:grc@justice.gov.uk)

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

15. 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.
16. 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 .....**

**Daniel Perry**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**