

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

Decision notice

Date: 24 August 2022

Public Authority: Telford and Wrekin Council
Address: Addenbrooke House
Ironmasters Way
Telford
TF3 4NT

Decision (including any steps ordered)

1. The complainant has requested information from Telford and Wrekin Council ("the Council") in relation to planning applications between specific time periods and including specific information.
2. The Commissioner's decision is that the exception at regulation 12(4)(b) is engaged and that the balance of the public interests favours the exception being maintained. He has also decided that the Council provided adequate advice and assistance under regulation 9 of the EIR.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 8 November 2021, the complainant wrote to the Council and requested information in the following terms:

"1. Could you please provide me with details / references of all planning applications submitted since 01/01/2017 that meet the following criteria in electronic format.
 - For Full Planning Application with Telford & Wrekin
 - For new dwellings, totalling less than 10 properties

- That were called in to planning committee (but not requested by either Ward member or Parish Council, nor if S106 was reason for call in)

And include the following details.

- Whether the Officer recommendation was to grant or refuse
- Whether the Committee chose to grant or refuse
- Details of each members decision whether it was to grant or refuse
- Details of the material planning concerns recorded
- Whether it went to appeal and final decision was to grant or refuse.
- Whether the applicant was a TWC Employee

2. Can you also please provide details/references of all planning applications of any type within Wrockwardine Parish submitted since the 01/01/2012 that are based on land classified as Green Network.

- Whether the Officer recommendation was to grant or refuse
- Whether decision was made by delegated authority or planning committee
- Whether the Committee chose to grant or refuse
- Details of each members decision whether it was to grant or refuse
- Details of the material planning concerns recorded
- Whether it went to appeal and final decision was to grant or refuse.
- Whether the applicant was a TWC Employee."

5. The Council responded on 22 November 2021 and refused to provide the requested information citing that following procedural exemption of FOIA: section 21 – information accessible by other means.
6. Following an internal review the Council wrote to the complainant on 9 December 2021. It stated that it upheld its original position, however, it explained that section 12 of FOIA – exceeds the appropriate cost limit, is also applicable.
7. During the Commissioner's investigation, he wrote to the Council to advise that upon consideration of the request, he considers that the

Council should have relied on the EIR, as the requested information is in relation to planning applications.

8. Following this, the Council contacted the complainant and explained that it would be applying regulation 6(1)(b) of the EIR and regulation 12(4)(b) of the EIR – manifestly unreasonable.
9. Additionally, the Commissioner asked the Council to clarify which exemption of the EIR it was relying on, as to rely on both 6(1)(b) and 12(4)(b) would be contradictory. The Council confirmed to both the Commissioner and the complainant that it was relying on regulation 12(4)(b) – manifestly unreasonable.

Scope of the case

10. The complainant contacted the Commissioner on 10 December 2021, to complain about the way their request for information had been handled.
11. The Commissioner considers that the scope of the case is to determine if the Council correctly refused the request as being manifestly unreasonable under regulation 12(4)(b) of the EIR.

Reasons for decision

Is the requested 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;

13. The Commissioner considers that, as the requested information is for planning applications, it falls under regulation 2(1)(c), due to the information relating to plans likely to affect the element and factors referred to in 2(1)(a). The Commissioner therefore considers that the request should be dealt with under the EIR.

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

14. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable. A request can be categorised as manifestly unreasonable on the grounds that it is vexatious or, as in this case, because of the cost associated with complying with it. Regulation 12(4)(b) is subject to the public interest test under regulation 12(1)(b).
15. The EIR does not contain a limit at which the cost of complying with a request is considered to be too great. However, the Commissioner's guidance suggests that public authorities may use the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 as an indication of what Parliament considers to be a reasonable charge for staff time. It has been determined that £450 is the appropriate limit for public authorities that are local government authorities, and that the cost of complying with a request should be calculated at £25 per hour; this applies a time limit of 18 hours.
16. For the purposes of the EIR, a public authority may use this hourly charge in determining the cost of compliance. However, the public authority is then expected to consider the proportionality of the cost against the public value of the request before concluding whether the cost is excessive. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken to:
 - determine whether it holds the information
 - locate the information, or a document which may contain the information
 - retrieve the information, or a document which may contain the information, and
 - extract the information from a document containing it.
17. Where a public authority claims that regulation 12(4)(b) is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit. This is in line with the duty under regulation 9(1) of the EIR.

The complainant's position

18. The complainant has explained that they do not understand how the Council could originally advise that the information is reasonably accessible to them, and then change its position to advise that it is being withheld as it is not reasonably accessible to the Council.
19. The complainant has explained to both the Council and the Commissioner that they thought the Council would have had access to technical staff, who could obtain the information from the database and then provide it in response to the request.

The Council's position

20. The Council has explained to both the complainant to the Commissioner, the Council staff would need to undertake the same search that the complainant would have to, in order to obtain the requested information.
21. The Council provided a guide to the complainant in the internal review response, which is a word document, giving instructions on how to navigate the Council's website/planning area.
22. The Council explained to the Commissioner that there are 3925 applications that fall under the complainant's request. To obtain the information, an officer would have to open and read each application and even if it took only five minutes per application, it would take over 327 hours.
23. In its submissions to the Commissioner, the Council also explained that there is only one method to obtain the information. However, it is also looking to procure a new planning system, which will be able to provide better back office reporting, which in turn would assist with any future requests.
24. Following the Commissioner contacting the Council, it also carried out a sampling exercise to determine how long it would take to obtain the information. It explained that the team searched for the information from part of the request, which resulted in 489 application records being found, and to open, read and determine if it included the requested information, it took on average between 5 to 10 minutes per record.
25. The Council explained that basing its sample on 5 minutes per record, for 489 records, this would take just over 40 hours.
26. As this applied to only one part of the request, the Commissioner is satisfied that even if it had only taken the Council half the time to view

each document, this would exceed the appropriate amount, especially as this applied to only one part of the request.

The Commissioner's view

27. The Commissioner accepts that there is value to the requested information for the complainant. However, for the reasons the Council has given, the cost of identifying and disclosing the requested would run into many hours and be a burden to the Council.
28. The Commissioner is satisfied that to obtain the information would be significantly greater than 18 hours, and so the request was manifestly unreasonable. As such, he is satisfied that regulation 12(4)(b) is engaged.

Regulation 12(1)(b)-public interest test

29. As the exception is engaged for the information, the Commissioner has considered the associated public interest test required by regulation 12(1)(b). The test is whether, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information. When carrying out the test the Commissioner must bear in mind the presumption towards disclosure provided in regulation 12(2).

Public interest in disclosing the information

30. Regulation 12(4)(b) is subject to the public interest test. This means that when the exception is engaged, public authorities also have to consider whether, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
31. Under regulation 12(2) of the EIR, public authorities are required to apply a presumption in favour of disclosure. Even where the exception is engaged, the information should still be disclosed if the public interest in disclosing the information is not outweighed by the public interest in maintaining the exception.
32. There will always be some public interest in disclosure to promote transparency and accountability of public authorities, greater public awareness and understanding of environmental matters, a free exchange of views, and more effective public participation in

environmental decision-making, all of which ultimately contribute to a better environment.

33. As the Commissioner's published guidance¹ on the application of regulation 12(4)(b) explains, the weight of this interest will vary from case to case, depending on the profile and importance of the issue and the extent to which the content of the information will actually inform public debate.
34. In this case, the Council has explained that the resource taken to obtain the information would be significant and disproportionate. However, it acknowledged that, the requester does have an interest in the information in its argument to support disclosure of the information.
35. It went on to explain that if Council resource was taken to obtain the information, it would affect the Council's ability to process planning applications in a prompt and efficient manner. This would also have a direct affect on individuals living in the borough.
36. The Council has also explained that it is fully transparent on planning matters and that all planning information is available online, free of charge.
37. The Council also advised that there is no wider public interest in the information that is being requested.
38. The Commissioner agrees that there is not sufficient wider public interest in this matter to justify the considerable time and effort it would take the Council to comply with the request.
39. In the absence of there being any significant public interest in disclosure, the Commissioner is satisfied that, in this case, the balance of the public interest lies in the exception being maintained.
40. 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... the presumption serves two purposes: (1) to provide the default position in the event

¹ <https://ico.org.uk/media/for-organisations/documents/1615/manifestly-unreasonable-requests.pdf>

that the interests are equally balanced and (2) to inform any decision that may be taken under the regulations" (paragraph 19).

41. As set out above, in this case the Commissioner's view is that the balance of the public interests favours the maintenance of the exception, rather than being equally balanced. This means that the Commissioner's decision, whilst informed by the presumption provided for in regulation 12(2), is that the exception provided by regulation 12(4)(b) was applied correctly.

Regulation 9(1) – duty to advise and assist

42. The EIR states the following:

"9. – 1(1) A public authority shall provide advice and assistance so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.

(2) Where a public authority decides that an applicant has formulated a request in too general a manner, it shall –

(a) ask the applicant as soon as possible and in any event no later than 20 working days after the date of receipt of the request, to provide more particulars in relation to the request; and

(b) assist the applicant in providing those particulars".

43. The Commissioner's guidance states²:

"When refusing a request for information under regulation 12(4)(b) on the grounds of cost, public authorities should provide the requester with appropriate advice and assistance. This will usually involve setting out the costs involved in answering the request and explaining how it might be refined to make it more manageable and therefore, not manifestly unreasonable. The aim of advice and assistance should be to help the requester to submit a new, more manageable, request."

44. In this case, the Council advised that there is only one way to access the information and therefore, it provided the complainant with instructions on how to navigate the online system.

² <https://ico.org.uk/media/for-organisations/documents/1615/manifestly-unreasonable-requests.pdf>

45. The Commissioner is satisfied that the Council fulfilled its duty to provide assistance to the complainant by providing the document to help navigate the system. Whilst it would not assist with the amount of time taken to obtain the information, it would allow the complainant to obtain the information more easily.
46. The Commissioner also accepts that there is only one way to obtain the information and therefore, the Council could not provide any advice on how the complainant could submit a more manageable request.

Right of appeal

47. 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

48. 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.
49. 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

**Phillip Angell
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