

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

### **Decision notice**

**Date:** 21 March 2022

**Public Authority:** City of Bradford Metropolitan District Council  
**Address:** Britannia House  
Hall Ings  
Bradford  
BD1 1HX

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

---

1. The complainant requested information from the City of Bradford Metropolitan District Council ("the Council") about the Disposal / Leases of Public Open Spaces.
2. The Council initially considered the information was exempt from disclosure under Section 12(1) (cost of compliance) of the Freedom of Information Act (FOIA). During the course of the Commissioner's investigation the Council amended its position relying on the Environmental Information Regulations 2004 (EIR) and cited Regulation 12(4)(b) (manifestly unreasonable) to the withheld information.
3. The Commissioner's decision is that the complainant's request can be categorised as manifestly unreasonable under regulation 12(4)(b) of the EIR, by virtue of cost, and the public interest favours maintaining this exception.
4. The Commissioner does not require the public authority to take any further steps.

#### **Request and response**

---

5. On 16 March 2021, the complainant wrote to the Council and requested information in the following terms:

"1. Documents appropriating Horsfall Playing Fields and Stadium provided as a result of the Employment Act to be part of Harold Park in 1931. They were opened by Alderman S Horsfall, J.P. Chairman of the Parks and Cemeteries Committee.

2. A map identifying the accompanying titles held in full as a gift in trust under the "Wibsey Slack and Low Moor Inclosure Act (1881)" and the operational boundary of Harold Park.

3. A copy of any Deed of Dedication made between The Fields in Trust and City Bradford MDC for avoidance of doubt that which is deposited with HM Land Registry guaranteeing the site to be held as POS (Public Open Space) in perpetuity and any amendment or alteration made.

4. Details of all funding procured through the Queen Elizabeth II Dedication including what and where and how the funding was dispensed.

5. Details of all communications and informatives given to the Fields In Trust regarding the procurement of recent to any lease to third parties and the express timings in relation to structural & material changes subsequently occurring on POS i.e. structures (Portable Buildings) and fencing (metal perimeter) excluding the public relating to the third party leasee, that being, a football league business gating and charging at a turnstile for the access to POS.

6. In the context of Fields In Trust consultations indicate who was the primary leasee to the Stadium and the subsequent football playing field within it of recent in relation to alteration of any dedication i.e. those occupying or controlling asset.

7. Confirm any Statutory Notices issued by Bradford Council in respect of any disposal of Horsfall Stadium, for avoidance of doubt that required by the District Auditor or specifically notice under the Charity Act (1990) or S122 of The Local Government Act or any notification given to be made by Land Registry.

8. Confirm whether the Council as custodian of an express gift in trust acknowledge as trustee that you are not the owner of the said land merely the custodian required to act in the interest of the beneficiaries.

9. In the matter of Horsfall Playing Field & Stadium, the basis of occupation for Bradford Park Avenue (CIC), Bradford Community Football Club (CBS) Horsfall Stadium (CIC) and whether any occupant has a permitted development right on the said land which is POS.

10. In the matter of any disposals, lease or otherwise, details of any meeting express to disposal, leasing of this site in accordance with the constitution.
  11. Details of all Lands Owned on the Councils Asset and Property Registers over 10 years that have been designated as POS.
  12. Indicate all Lands disposed off from the Asset and Property Registers over 10 years that have been Disposed of as POS and whom through the process of delegation was nominated to be a proper officer under the Cities scheme of delegation under s122 of the LGA.
  13. Notification of Sites above relating to corresponding Notices of Statutory Advertisement that the council are obliged to make in law and keep record."
6. The Council responded on 8 April 2021, citing section 12(1) (cost of compliance) of FOIA to refuse the disclosure of the requested information. The Council upheld their initial response at internal review on 18 May 2021, but disclosed information for question 7, and cited Section 21, explaining that information regarding questions 1,2,3 and 6 as well as part of 5 were already publicly available.

### **Scope of the case**

---

7. The complainant contacted the Commissioner on 24 May 2021 to complain about the way their request for information had been handled.
8. The Commissioner clarified with the Council its responses to both the initial request and subsequent internal review decisions. It appeared to the Commissioner that the Council could not rely on FOIA to withhold the information within scope of the request, as this was clearly related to the environment (disposal/lease of land), and therefore subject to EIR rather than FOIA.
9. The Council agreed, on reflection, that the information would constitute environmental data under Regulation 2(1)(c) of the EIR. They then went on to consider applicable exceptions, citing regulations 12(4)(b) to withhold the requested information for questions 1, 12 and 13.
10. The Commissioner's investigation has therefore focussed on whether the Council is entitled to rely on regulation 12(4)(b) of the EIR to refuse to disclose information within scope of the request, and the balance of the public interest. He has also considered whether there was any breach of regulation 9(1). The Commissioner will also go on to consider the other exceptions relied upon, should regulation 12(4)(b) not apply.

## Reasons for decision

---

### **Is the requested information environmental as defined by the EIR?**

11. 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)";
12. It is important to ensure that requests for information are handled under the correct access regime. This is particularly important when refusing to provide information, since the reasons why information can be withheld under FOIA are different from the reasons why information can be withheld under the EIR. In addition, there are some procedural differences affecting how requests should be handled.
13. The Commissioner's well-established view is that public authorities should adopt a broad interpretation of environmental information, in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact.
14. The Commissioner notes that the requested information comprises information about policies, legislation, plans, programmes, and

environmental agreements. He is satisfied that the information being requested would fall within the definition at regulation 2(1)(c) and/or 2(1)(e).

15. The Commissioner is therefore satisfied that the information is environmental, and the Council should have considered the request under the EIR. The Council has since considered the request under the EIR.

### **Regulation 12(4)(b) – manifestly unreasonable**

16. 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).
17. 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.
18. 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.

19. Multiple requests within a single item of correspondence, as in this case, are separate requests for the purpose of regulation 12(4)(b).
20. The Commissioner's position is that there may be occasions where it is permissible to consider a number of EIR requests together when deciding if they are manifestly unreasonable on the grounds of cost. This is in line with the approach to requests considered manifestly unreasonable on the grounds that they are vexatious, where the context in which they are made can be taken into account.
21. 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 Council's position**

22. The Council's submissions to the Commissioner outlined that the development concerned relates to a parcel of land which has been partially converted into a stadium and playing fields. There are numerous documents associated with the land which span a large timeframe dating back to 1931. The Council estimated this could encompass thousands of separate documents, some of which are held digitally but a large number are paper records that would need to be located, photocopied, and converting into a readable format.
23. In addition, several of the paper documents are held in off-site archive storage. These would need to be located at the storage facility, retrieved, collated, photocopied, and converted, as above, to be accessible to the requestor.
24. The Council said that it would require an officer to conduct a thorough search of the deeds held in storage of which there are many thousands of deed packets, and it is estimated at a minimum 50 hours just to establish if the information is held.
25. To provide these documents in a machine-readable format, it would require photocopies of each deed, and would take between 1 and 5 minutes per deed to open and scan.
26. The Council also advised that some of the requested information may be held by the Land Registry and has advised the complainant of this.

## **The Commissioner's position**

27. The Commissioner considers that the Council has given sufficient thought to the work that it would need to do to provide the information requested. He accepts its account of how its documents and files relating to deeds are managed and how, as a result, the complexity around how recorded information associated with the request is held adds to the burden to the Council. The Commissioner considers the Council's estimates would be of a reasonable timescale.
28. The Commissioner accepts that there is value to the requested information for the complainant. As expressed in their request for an internal review, the underlying issue to which the request related was around the use of the environment and its effects on residents. However, for the reasons the Council has given, the cost of identifying and disclosing the requested information would run into many hours, and potentially thousands of pounds and would be, in the Commissioner's view, a disproportionate financial burden to the Council.
29. The Commissioner's decision is therefore that the Council is entitled to rely on regulation 12(4)(b) of the EIR in respect of the request as a whole.

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

### **Public interest in disclosing the information**

30. In their request for an internal review, the complainant stated that;

"It is clearly in the Public Interest , to confirm the Status of the Public Open Space, a Beneficial Gift In Trust and to ensure that the Council the Corporate Trustee maintain that Trust on behalf of the Public. It is also in the public interest to ensure the necessary protection and separation is maintained."
31. The Council acknowledges that there is an expectation of disclosure under EIR, as well as a public expectation of the appropriate use of public funds.
32. The Council also acknowledges that individuals have the right to understand the environment that they live in, and that everyone deserves the right to live in a healthy and safe environment.

### **Public interest in maintaining the exception**

33. In its submission to the Commissioner, the Council stated that sourcing and providing the information would be so burdensome that officers

would need to be taken away from their primary roles for a considerable period. This would cause significant disruption to several services and would diminish the quality of service to the public.

34. In addition, there is a considerable public interest in the effective use of Council resources. To provide the information in full would cost a tremendous amount of time and money from the public purse.
35. The Council has proactively disclosed information regarding the request where it is able to within the cost limits.

### **Balance of the public interest**

36. The Council says that as a publicly funded organisation it is important that it exercises tight control of expenditure and resources. It is in the public interest that all council funding is appropriately managed.
37. To comply with this request would entail a significant amount of time and effort. To gather the requested information council staff would have to be diverted from their core duties to devote time on locating, extracting, and collating all the information held.
38. The Council considers that while there is always a public interest in releasing information, this interest needs to be weighed against the cost of providing it and consideration should also be given to the information that is already in the public domain.
39. The Commissioner agrees with the Council in this case; that the public interest favours maintaining the regulation 12(4)(b) exception. The financial and time burden that disclosing the requested information would cause to the council is substantial. In the Commissioner's view that burden would be disproportionate and not in the public interest.

### **Regulation 9 – advice and assistance**

40. Regulation 9(1) of the EIR says that 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.
41. The Council told the Commissioner that, given the nature of the request it was difficult to offer any further advice (in addition to the advice and information it has already provided to the complainant), that would not impose a disproportionate burden on the council.
42. Because of the way associated information is held, and because of the timescales involved, the Commissioner considers that there was no advice that the council could have reasonably given the complainant,



other than that already provided, to help them narrow down their request so that the burden of complying with it could be reduced. As such, he finds the Council complied with its obligations under regulation 9(1).

## Right of appeal

---

43. 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@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)

44. 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.
45. 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  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**