

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

### **Decision notice**

**Date:** 1 March 2022

**Public Authority:** Bristol City Council  
**Address:** The Council House  
College Green  
Bristol  
BS1 5TR

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

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1. The complainant requested information from Bristol City Council (“the Council”) about plans for all phases of a particular residential development, along with the Health & Safety file for the development.
2. The Council initially considered the information was exempt from disclosure under Section 40(2) (personal information) 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) cited below:
  - Regulation 12(3) – Personal data of an individual other than the applicant
  - Regulation 12(4)(a) – Information is not held
  - Regulation 12(4)(b) – Manifestly unreasonable
  - Regulation 12(5)(a) – Disclosure would adversely affect public safety
  - Regulation 12(5)(e) - Confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest
3. The Commissioner’s decision is that the complainant’s entire 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

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5. On 15 May 2021, the complainant wrote to the Council and requested information in the following terms:

“Please can you provide both the complete approved plans and the "as built" plans for all the phases of The General residential development built by City & Country on (address). Please also provide the Health & Safety File for the development.”
6. The Council responded on 3 June 2021, citing section 40(2) (personal information) of FOIA to refuse the disclosure of the requested information. The Council upheld their initial response at internal review on 2 July 2021.

## Scope of the case

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7. The complainant contacted the Commissioner on 31 July 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 built environment (approved plans and as built plans), 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) amongst others, to withhold the requested information.
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

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**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, 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 says 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 19<sup>th</sup> century building which has been converted into many residential flats and several commercial premises. Each residence has its own plans and associated documents. The Council estimated this could encompass thousands of separate documents, some of which are held digitally but a number are paper records that would need photocopying and converting into a readable format.
23. In addition, several of the paper documents are held in off-site 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 from the available information from building control, it could take weeks for staff to provide information in an accessible format.
25. An officer visited the archives unit to ascertain the number of physical copies of files relating to the request, a box containing roughly 150 A1 plans was located. To provide these plans in a machine-readable format, it would require several photocopies of each plan, as they do not fit onto a conventional photocopier, and therefore would take up to 15 minutes per plan to scan, equating to a minimum 37.5 hours to scan.
26. The Council also advised that it is possible additional physical files could be held at City Hall which has been untouched for two years due to the onset of the Coronavirus Pandemic. The same process would need to be carried out with these files as previously mentioned, which would only add to the cost and time constraints.

27. It further stated that a sampling exercise was carried out by a key officer involved with the request. It took just over a minute to review each digitally held document to determine if it fell within scope of the request. A conservative estimate of the number of documents held digitally that would require review was over 1000, which would equate to a minimum of 16.6 hours and does not take account of any other sources such as officer email accounts.

### **The Commissioner's position**

28. 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 plans 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 estimate of just over a minute to review the digital information is reasonable, and that 15 minutes to photocopy A1 physical plans, would be a reasonable timescale.
29. 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 built environment and its effects on the residents, as well as their concerns regarding charges for maintenance and systems within the development. However, for the reasons the Council has given, the cost of identifying and disclosing the requested information would run into many hours, and well over a thousand pounds and would be, in the Commissioner's view, a disproportionate financial burden to the Council.
30. 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**

31. In their request for an internal review, the complainant stated that they are a leaseholder at the development and believe they have a right to see the requested information. It is noted that the EIR specifically states under regulation 12(2), that a public authority shall apply a presumption in favour of disclosure. The Council acknowledges that there is a public interest in transparency and accountability.

32. 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.
33. 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**

34. 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.
35. 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 for a matter that would be of little public interest.
36. The Council already proactively publishes information regarding planning and developments it is has oversight on. Disclosure of the requested information appears to only be in the interests of the requester and would serve no wider public interest.

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

37. 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.
38. 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.
39. 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.
40. 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**

41. 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.
42. The Council told the Commissioner that, given the nature of the request it was difficult to offer any further advice (in addition to the information it has already provided to the complainant), that would not impose a disproportionate burden on the council.
43. Because of the way associated information is held, and because of the scale of the development project, the Commissioner considers that there was no advice that the council could have reasonably given the complainant, to help them narrow down their request so that the burden of complying with it could be reduced. As such, he finds there was no breach of regulation 9(1).



## Right of appeal

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44. 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)

45. 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.
46. 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  
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