

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

Date: 10 January 2023

Public Authority: Surrey Heath Borough Council
Address: Surrey Heath House
Knoll Road
Camberley
GU15 3HD

Decision (including any steps ordered)

1. The complainant requested specified building control related information for a named building. Surrey Heath Borough Council (the 'Council') said some of the information was exempt under section 21 of FOIA as it was reasonably accessible online. Ultimately, it said to respond to the remainder of the request was 'manifestly unreasonable' citing Regulation 12(4)(b) of the EIR. The complainant did not complain about the Council's reliance on section 21 of FOIA so the Commissioner has not considered this aspect any further.
2. The Commissioner's decision is that the Council was entitled to rely on Regulation 12(4)(b) of the EIR to refuse to comply with the remainder of the request for the reasons set out in this notice.
3. No steps are required to ensure compliance with the legislation.

Request and response

4. On 22 November 2021, the complainant wrote to the Council and requested information in the following terms (the Commissioner has numbered the various parts of the request to aid the reading of his decision notice):

"1. I would like copies of all the building regulation visits, building sign offs and inspections by SHBC [the Council]

that occurred when [address redacted] was being built and any inspections that occurred or certificates issued once [name redacted] building was complete. On the original plans they are known as NC2 and NC3.

2. I would like to see any copies of any non compliance with building regulations any non compliance notices and any subsequent site visits relating to any non compliance.
 3. I would like to see all copies of any enforcement notices issued or appeals against any notices and again any subsequent follow ups relating to enforcement
 4. I would like to see copies of any completion or final certificates issued in relation to building control and regulations
 5. I also would like to know at which date and stage any building regulation/inspection visits occurred and if any were missed, rearranged or not carried out
 6. I would like copies of all correspondence to the developer and builder from SHBC and visa [sic] versa relating to building regulations and inspections
 7. In case of any doubt as to what I am asking for in this FOI I want copies of all building regulations visits, inspections, notices, certifications and correspondence relating to [building name redacted]."
5. The Council responded on 29 November 2021. For parts 1, 5, 6 and 7 of the request, the Council said:

"You have request [sic] information specifically for [address redacted]. We can confirm that unfortunately, due to the scale of the development that [building name redacted] is part of and the way in which the Council have recorded and stored the information held in relation to this development, it is not possible for us to identify and ascertain what information relates specifically to [building name redacted] part of the development and therefore we are unable to provide you with the specific information you have requested in response to this part of your request."

6. For parts 2 and 3, the Council said that no notices were issued. For part 4 of the request, the Council cited section 21 of FOIA (the exemption for information that is accessible to the applicant by other means). It

explained that completion and final certificates are publicly available and provided the relevant URL.

7. The complainant requested an internal review on 29 November 2021 of all parts of the response except for parts 2 and 3.
8. Following an internal review the Council wrote to the complainant on 7 December 2021. It now advised:

“When the development which included [building name redacted] was built back in 2006 the Council was using a paper filing system, since this time we have moved to an electronic register, when we moved to the electronic register all paperwork was bulk scanned in and stored electronically unfortunately when this took place there was no categorisation or catalogue of the data and documents that may include data relevant to [building name redacted] specifically where not identified. We have looked at the quantity of electronic documentation we hold for this project and we can confirm that we hold 22 pdf files each PDF files hold a mixture of information that may or may not be identifiable as relevant to [building name redacted], within these 22 PDF there are over 4000 pages. For the Council to try and identify and then extract data that may be identified as relevant to [building name redacted] we believe would take an excessive amount of time and divert resource and we therefore believe it would be manifestly unreasonable as defined under EIR regulation 12(4)(b). The Council is not aware of any safety issues with regards to this development and as previously stated can confirm that no non-compliance concerns or enforcements took place, this knowledge was derived from staff knowledge as the staff that were here at the time of the development build are still working at the Council, therefore we believe that the public interest in maintaining this exemption is met.”

9. The Council also provided more details as to how to access the publicly available information via the URL.
10. Following the internal review, the complainant wrote to ask the Council whether she could view the 4000 plus pages herself. The Council responded on 11 January 2022 and said that unlike planning documents, building control information is not a public record. It reiterated that to prepare the information for viewing in person would be manifestly unreasonable on time and cost grounds.

Scope of the case

11. The complainant contacted the Commissioner on 31 January 2022 to complain about the way her request for information had been handled. She also asked the Commissioner to consider her request to view the information in person.
12. The Commissioner notes that the complainant has not made any further reference to the information exempted under section 21 of FOIA (part 4 of the request) so he has excluded this aspect from further consideration.

Reasons for decision

Regulation 12(4)(b) – manifestly unreasonable

13. The Commissioner agrees that the requested information is likely to be environmental and that therefore, the Council was right to handle the request under the EIR.
14. The Commissioner has next considered whether the Council is entitled to rely on regulation 12(4)(b) (manifestly unreasonable) of the EIR to refuse to provide the requested information.
15. Regulation 12(4)(b) of the EIR provides that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable. In this case, the Council is citing Regulation 12(4)(b) on the grounds that to comply with it would impose a significant and disproportionate burden on the Council's resources, in terms of time and cost.
16. The Commissioner has referred to his own guidance¹ and the submissions provided to the complainant by the Council in the internal review response.
17. He has also taken into account the Council's explanation that the documents for the development, which includes the named building, were scanned into PDFs with no indexing or cataloguing meaning that

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

information about other properties in the development are included in this bundle. The Council said that each individual page would need to be reviewed to identify which area it relates to within the complex and if it is related to the named building it would then need to be screen shot and the screen shot placed in a working document. The Council told the Commissioner it does not know how many pages there are in relation to the named building but has set a reasonable guess at this being approximately 500 as one of the larger developments for the complex.

18. The Council has provided the following estimate:

“To review each page x4000 pages at x20 seconds per page = 22 hours

To copy the relevant pages x500 at x15 seconds per page = 2 hours.”

19. Whilst the Commissioner notes that the Council accepts its poor record keeping practices, he understands it has since said it has improved its records management policy. However, at the time of the request, the Commissioner accepts that the information requested is voluminous and that it would require significant resource to extrapolate the relevant information. He considers that to do so would impose an unreasonable burden upon the Council.

20. The Commissioner is therefore satisfied with the Council's explanation that going through the information in order to respond to this EIR request would impose an unreasonable burden upon it. Under the EIR, unlike under FOIA, public authorities are entitled to include the time taken to consider the application of exceptions when calculating the cost of compliance with an EIR request.

21. It follows that the Commissioner considers that the Council was correct to rely on Regulation 12(4)(b) when dealing with this request.

22. Regulation 12(4)(b) is subject to a balance of public interest test.

Arguments in favour of disclosure

23. The Council said it had considered the following arguments:

- Transparency by the public authority about the nature and extent of the building control information it gathers.
- Accountability of the Council's processes and them being open to public scrutiny.
- Ease concerns about potential building safety concerns or enforcements that took place during the planning and building stage.

Arguments in favour of maintaining the exception

24. The Council told the Commissioner it had considered the following arguments:

- The Council was not aware of any safety or building control enforcements or concerns at the time of, or since the building and prior to the EIR request. This knowledge was derived from staff that were at the Council at the time of the planning and building and are still working within the Building Control Department.
- Completion and final certificates issued by the Council are publicly available online these confirm that the relevant building regulation had been satisfied.
- To enable the Council to carry out its core function without disruption that would be caused by complying with the request that would impose a significant burden in terms of time and resource.
- Building Control documents are not routinely placed in the public domain as there is no requirement or expectation to, unlike planning documentation.
- The Council has demonstrated accountability and transparency by complying with focused requests whereby data from more recent building control cases are requested.

25. The Commissioner recognises that there is a public interest in understanding work undertaken on the specified building; however he recognises that the cost of providing a response in this case would be extremely expensive and time consuming. The Council already proactively makes some information about the specified building available on its website.

26. The Commissioner is therefore satisfied that the Council is entitled to rely on Regulation 12(4)(b) as its basis for not responding to the request in full.

27. Regulation 9 of the EIR requires a public authority to provide advice and assistance to requesters. The Council told the Commissioner that:

“Unfortunately although we would have liked to have advised and assisted by asking the applicant to reduce the information they wanted or be more specific about a particular document they were looking to be provided a copy of, it would have still resulted in us having to undertake the same search so would in real terms still be manifestly unreasonable. We did inform the complainant of the public information available but unfortunately could not see any other way to advise or assist?”

28. Although the Council did not give the complainant any advice or assistance as to how she might refine her request, given the significant volume of the requested information, the Commissioner's view is that revising the request would be unlikely to make a difference.

Right of appeal

29. 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

30. 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.
31. 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

Laura Tomkinson
Group Manager
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Wycliffe House
Water Lane
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