

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

### **Decision notice**

**Date:** 28 February 2023

**Public Authority:** London Borough of Enfield  
Civic Centre  
Silver Street  
Enfield  
EN1 3XF

### **Decision**

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1. The complainant has requested, from the London Borough of Enfield ('the Council'), information relating to the conversion of Refuge House (an office block) into residential units. The request was initially handled under the Freedom of Information Act 2000 ('FOIA'), and information was disclosed. Subsequently the complainant contacted the Council numerous times about certain missing information, and further disclosures followed. However, the complainant argued that the Council had still not disclosed all information held within scope of the request, despite the Council saying that it had. During the Commissioner's investigation, the Council changed its position, saying that the request falls under the EIR (not FOIA) and should have been refused under regulation 12(4)(b) ('manifestly unreasonable') on the grounds of costs.
2. The Commissioner's decision is that regulation 12(4)(b) is engaged and should be maintained – the Council is entitled to refuse the request as manifestly unreasonable on the grounds of costs. However the Council has breached regulation 14 as did not, within 20 working days of the request, issue a refusal notice citing the exception it is now relying on.
3. The Commissioner does not require any steps to be taken following this decision notice.

## Request and response

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4. The complainant made the following information request to the Council on 11 October 2021:

"All available details for meetings and correspondence that have occurred since January 1st 2020 regarding the conversion of Refuge House in EN1 into residential units (including all types of communication e.g. in person meetings, telephone calls, emails etc.)

Please provide the following information for each meeting / correspondence:

- Date
  - Type of meeting/correspondence e.g. Pre-application advice, councillor briefing etc.
  - Format – e.g. email, telephone call, in person
  - All available notes related to each meeting/correspondence e.g. notes to show what was discussed, briefed, agreed etc. or email content
  - Names of all Council officers in meeting/correspondence
  - Names of all Councillors in meeting/correspondence
  - Names of all the companies or organisations involved in meeting/correspondence
  - Names of all developers/architects/housing association representatives etc. involved
  - Please note that the request should include all meetings / correspondence that Enfield Council has been involved with, as well as any meetings/correspondence that subsidiaries such as Housing Gateway Limited have been involved with."
5. The Council initially responded on 9 November 2021, confirming that it held information within scope and making information available via the Council's Secure Transfer System due to the amount of information being provided (apparently 86 documents). Some information was redacted pursuant to section 40(2) of FOIA ('personal information').
6. However the complainant replied that some information was missing (emails, attachments and information relating to meetings and telephone calls). This led to a further disclosure of information by the

Council (apparently 12 documents) on 2 December 2021 and the Council said all information was now disclosed.

7. The complainant considered that some information was still missing, and requested an internal review on 2 December 2021. Correspondence followed in which the complainant described the missing information, however the Council did not provide an internal review outcome until 1 April 2022 – when it disclosed additional information.
8. The internal review said that in total 303 documents had been disclosed in response to the request. However more information was subsequently disclosed on 27 April 2022, 17 June 2022, 2 July 2022 and 1 August 2022. The Council told the complainant that its 1 August 2022 response was its final response to the request, and that further requests from the complainant about Refuge House would be considered vexatious (although the Council did not say that the 11 October 2021 request itself was vexatious).

### **Scope of the case**

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9. The complainant contacted the Commissioner on 9 February 2022 to complain about the way their request for information had been handled.
10. The initial complaint was that the Council had not provided an internal review (although the complainant also said that the Council could resolve the complaint by “providing the information”). As noted above, the Council’s internal review was provided on 1 April 2022. The complainant then focused on the Council’s delay in disclosing information and their belief that the Council held more information that had not been disclosed.
11. The Commissioner exchanged correspondence with the complainant about the scope of the case, and explained that he aimed to address whether the Council holds the ‘missing’ information the complainant had referenced.
12. The Commissioner’s initial correspondence with the Council therefore focused on that issue. The Council’s first submissions to the Commissioner stated among other things that the Council should have handled the request under the EIR, not FOIA; that in future a similar request would be refused under regulation 12(4)(b) of the EIR; but that in terms of the complainant’s comments about ‘missing’ information, the Council has disclosed all information it holds within scope of the request.
13. The Council also said it was not clear why the complainant believed a particular email was missing, and what “other correspondence” the

complainant was referring to. The Commissioner wrote back to the Council with specific examples and details highlighted by the complainant to clarify those areas and help the Council to confirm whether it held that particular information. The Commissioner also asked whether the Council has the ability to search for emails centrally rather than asking individual members of staff to search their mailboxes. (Searches by individuals had failed to result in the disclosure of all information within scope of the request in the first instance and searches had to be repeated.)

14. In response, the Council changed its position with respect to the 11 October 2021 request. The Council now retrospectively relies on regulation 12(4)(b) to refuse the request, on the grounds of costs.
15. In the present decision, the Commissioner will therefore consider whether the request falls under the EIR as the Council now believes, and whether the Council is now entitled to rely on regulation 12(4)(b) to refuse it as a manifestly unreasonable request, on the grounds of costs.
16. The scope stated in paragraph 15 was explained to the complainant on 2 February 2023.

## **Reasons for decision**

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### **Environmental information**

17. Regulation 2(1)(c) of the EIR provides that 'environmental information' includes any information on measures and activities affecting or likely to affect the elements of the environment (listed in regulation 2(1)(a)), and measures and activities affecting or likely to affect the factors (listed in regulation 2(1)(b)) affecting or likely to affect those elements.
18. In this case the request was for information relating to the conversion of a building into residential units.
19. The Commissioner referred to his website guidance on environmental information<sup>1</sup> and is satisfied that the information is environmental under regulation 2(1)(c). Information on communications relating to the development of residential units will clearly fall under that provision.

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<sup>1</sup> <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/regulation-2-1-what-is-environmental-information/>

## **Regulation 12(4)(b)**

20. This regulation provides that a public authority may refuse to disclose information to the extent that the request is manifestly unreasonable.
21. The Commissioner has published detailed guidance on this exception<sup>2</sup>.
22. The Commissioner highlights a previous decision notice in FER0694844<sup>3</sup>, a case similar to the present complaint in that the public authority in FER0694844 applied the same exception to a request, for the same reason (on the grounds of costs), having already disclosed information.
23. In FER0694844 the public authority argued it had spent 80 hours working on the request. The public authority in the present case claims to have spent 60 hours (so a similar amount).
24. Paragraphs 16 – 24 of the decision notice cited above set out some relevant considerations and guidance when refusing a request as manifestly unreasonable. The Commissioner considers that it is appropriate to refer the reader to those paragraphs, and the guidance cited in paragraph 21 of the present decision notice, rather than repeat the relevant points here.
25. In this instance the Council has said that the request is “extremely broad”; the conversion of Refuge House has generated a lot of Council correspondence and information; the requested information is not held centrally (the Council said various teams are involved – “including Planning, Waste Services, Traffic and Transportation, Complaints and Information and Legal”); and that “The task of locating, extracting and ultimately providing this information has caused and will further cause a significant strain on Council resources”.
26. The Council has provided the Commissioner with estimates of time already spent on the request, and which tasks that time was spent on:  
  
“We have identified a total of 574 emails that were disclosed ... We estimate that to have extracted each email, read through it and determined whether it fit within the scope of the request, as well as converting the record into PDF format, would’ve taken, on average,

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

<sup>3</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2258431/fer0694844.pdf>

approximately 7 minutes per record. This equates to approximately 66 hours of time. This is also not inclusive of any other documentation that fitted within the scope of the request i.e. supporting documents, photos or plans, which were also disclosed to the applicant ... this number does not include any emails or other records that were identified in the staff searches but were reviewed and determined not to fall within the scope of the request. Therefore, the total number of records actually reviewed by the Council is in excess of 574 and the 60 hours is therefore a conservative overall estimate ... the Council also had to spend an excessive amount of time redacting the records before disclosing them to the applicant, which again, contributed to the overall aggregated burden."

27. The Council made further comments relating to the proportionality and value of the request. For example the development has already been considered by the Planning Inspectorate; the Council explained that it has already corresponded with the complainant extensively on the subject of Refuge House; and that providing further information would, to an extent, be providing information that the complainant already possesses (as part of the complaint, the complainant has supplied copies of certain information that has not yet been disclosed by the Council).

**Is regulation 12(4)(b) engaged?**

28. The Commissioner has considered whether the Council's estimate of the time spent on the request is reasonable.
29. He has considered the arguments of the Council and the complainant.
30. The Council's submissions indicate that the Council took relevant activities into account when calculating whether the appropriate limit of 18 hours (under the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004) has been exceeded.
31. Furthermore, the Council's submissions indicate that its figure does not include time spent on making redactions – an activity that the Council is entitled to include under the EIR. It is clear from the Council's responses to the complainant that some information (personal data) was redacted.
32. The Commissioner notes that in addition to the initial response and internal review, the Council made numerous attempts to address missing information highlighted by the complainant (see paragraph 8 above for dates), which will have added to the time spent on the request overall.
33. The Commissioner acknowledges that if the Council's initial searches had located all of the relevant information, the Council would not have had to spend time on carrying out further searches for missing information.

34. The complainant argued that the Council disclosed some duplicates of emails, although the complainant did not say exactly how many emails were duplicates. The Council accepts that some duplicates were disclosed, but argues that it was not possible to remove all of the duplicates, due to the volume of information involved and the way it was held.
35. In a recent decision notice<sup>4</sup>, the Commissioner upheld the application of regulation 12(4)(b) where the number of emails or documents potentially relevant to the request was "more than 300" and the average time to process each item was conservatively estimated to be five minutes (see paragraph 11 of that decision notice). The public authority in the present case has given the Commissioner a similar average time per item; and the number of emails already disclosed is almost twice the estimate in IC-207640-H1R4.
36. In the present case, the Commissioner considers that the estimate of 60 hours is reasonable.
37. It exceeds the appropriate limit of 18 hours by a significant margin; whilst public authorities are expected to bear a greater burden under the EIR, the burden of this particular request has already been considerable.
38. Whilst the Commissioner sees no reason to doubt the Council's estimated average time of seven minutes per item, the Commissioner notes that even if that figure were halved the total would still exceed the appropriate limit considerably.
39. Given the time already spent on the request, and the Council's comments about proportionality and value, the Commissioner is satisfied that the exception is engaged.

### **Regulation 12(4)(b) – public interest test**

40. Regulation 12(4)(b) is subject to the public interest test at regulation 12(1)(b), which provides that the public authority may refuse to disclose the information to which the exception applies if "in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information".

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<sup>4</sup> <https://ico.org.uk/media/action-weve-taken/decision-notice/2023/4024233/ic-207640-h1r4.pdf>

41. The Council acknowledges considerations including transparency, accountability and greater public awareness of environmental decision making.
42. The complainant has emphasised local interest regarding the conversion of Refuge House, and has alleged wrongdoing in relation to the planning decision.
43. The Council has argued that "there has already been independent scrutiny of the Council's decision by the Planning Inspectorate", and that the opportunity for a judicial review of the decision has passed. The Council commented that the complainant was advised of the opportunity to seek a judicial review when it was available to the complainant, and that the complainant chose not to seek one. The Commissioner also notes that the development is already taking place, and that the complainant already has copies of some of the 'missing' information.
44. To explain the last point further, the Commissioner's understanding is that the complainant wants, from the Council, (for example) information already disclosed by the Planning Inspectorate. The complainant also wants certain emails that have not been disclosed by the Council in response to the present request but **have** been disclosed by the Council in response to other information requests submitted by the complainant or other individuals.
45. The Council has emphasised the public interest in "protecting public authorities from exposure to disproportionate burden" in handling information requests. It considers that further work on the request (for example searching the Council's email servers for missing information, as the complainant wants) "will place a significant strain on resources and will disrupt the Council's ability to deliver mainstream services and answer other requests for information".
46. The Commissioner has some points to make regarding the complainant's detailed comments about missing correspondence between the Council's planning officers and the planning applicant. The complainant seeks correspondence between the Council and the applicant regarding changes the applicant should make to a refused application, specifically the removal of a concrete ramp. The complainant explained that the Council published a brief notice in February 2021 refusing an application; a more detailed notice was disclosed in November 2021 which referred to the Council's concerns about the ramp; and between the publishing of the February 2021 notice (which did not mention the ramp) and the disclosure of the November 2021 notice (which did mention it), the applicant removed the ramp. The complainant wonders how the applicant knew to remove it and was able to carry out the work.



47. The complainant believes:

"... there is written correspondence between [the Council] and the applicant which took place between December 2020 and July 2021 about changes [the applicant] needed to make to their refused application. I believe this information has been withheld as it would confirm that the officer(s) pre-determined their decision of 21/00555/CND and made commitments to the applicant which they should not have made ..."

48. However the complainant has also quoted an email that they already possess (it is not clear whether it was obtained from the Council or elsewhere), dating to May 2021, in which the applicant is alleged to have said to the Council that work was being carried out on site to remove the ramp "as you requested". Therefore, the complainant already possesses some information that, the complainant would say, confirms their belief that the Council gave advice to remove the concrete ramp.
49. It is difficult to see how the further correspondence that the complainant wants about the concrete ramp (if held) would add much to what the complainant or the public knows based on information already available.
50. Furthermore, the Commissioner notes that in any event the Council provides a 'pre-application advice' service<sup>5</sup> whereby planning officers can give "comments and guidance on the content, construction and presentation of an application likely to satisfy planning policies"; and he would direct the complainant to comments he has recently made on the subject of pre-application planning advice in case IC-206377-X4X4<sup>6</sup>, in terms of councils giving applicants the opportunity to modify their plans.
51. Ultimately the Commissioner agrees with the Council's position that it is entitled to refuse the request as manifestly unreasonable on the grounds of costs. He considers that the public interest in maintaining the exception outweighs the public interest in disclosure of the information.
52. He notes that there will always be some public interest in disclosure to promote transparency, accountability, public awareness and understanding of environmental matters and public participation in

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<sup>5</sup> <https://www.enfield.gov.uk/services/planning/planning-pre-application-advice-service>

<sup>6</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4024160/ic-206377-x4x4.pdf>

environmental decision making. However in this case the public interest in transparency is met through the information that has already been disclosed or is otherwise already in the public domain; and the Commissioner emphasises that the planning application process provides a mechanism for public engagement with planning decisions.

53. The significant burden of the request in this case is a weighty factor in favour of maintaining the exception; and the Commissioner has seen no clear evidence of wrongdoing, despite the complainant's suspicions and their allegations. On balance, there is a greater public interest in protecting the Council from exposure to disproportionate burden or to an unjustified level of distress, disruption or irritation in handling information requests. Dealing with the request further would strain the Council's resources and restrict its ability to deliver mainstream services or answer other requests.

### **Regulation 9(1) – advice and assistance**

54. Regulation 9(1) states 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".
55. When refusing a request for environmental information under regulation 12(4)(b) on the grounds of costs, the Commissioner views regulation 9(1) as an obligation for public authorities to assist requesters to reduce the scope of the request.
56. The Commissioner notes that in this instance, the Council has already disclosed a large amount of information within scope of the request; furthermore, on numerous occasions it carried out additional searches when the complainant highlighted missing information, which resulted in more disclosures.
57. Understandably, the complainant is dissatisfied that the Council, having initially decided to disclose information, failed to locate and disclose all of it in the first instance, and it was necessary for the complainant to approach the Council repeatedly about missing information over a period of many months.
58. The Council has said that if it had applied regulation 12(4)(b) earlier, it would also have helped the complainant to narrow the scope of the request, making it more manageable; but that in this instance, the Council "has already disclosed information ... beyond what it would have considered reasonable" as part of any advice and assistance the Council could have provided.
59. In the previous decision notice cited above (paragraph 22), the Commissioner acknowledged steps taken by the public authority, and

the volume of information disclosed, in the period before regulation 12(4)(b) was applied. In the present case, the Council corresponded with the complainant at length about the request and took steps to locate and provide 'missing' information highlighted by the complainant (see paragraphs 6 – 8 above); and has apparently already disclosed 574 emails, plus other documents.

60. The Commissioner is satisfied that the Council has complied with its duty under regulation 9(1).

### **Procedural matters**

61. Under regulation 14 of the EIR, if a public authority is going to refuse a request for environmental information under regulation 12 it must issue a refusal notice citing the exception it is relying on within 20 working days of receipt of the request. Because the Council handled the request under FOIA and not the EIR, it has not complied with regulation 14.

### **Other matters**

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62. The Commissioner notes that the Council took almost four months to provide an internal review (one was requested on 2 December 2021, and the Council provided its response on 1 April 2022). Whilst regulation 11 of the EIR provides for internal reviews and specifies a time for compliance, at that point the Council was incorrectly handling the request under FOIA. Internal reviews are not a statutory requirement under FOIA, but they are a matter of good practice and they should take no longer than 20 working days in most cases.

## Right of appeal

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63. 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)

64. 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.
65. 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 Kennedy**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**