

Environmental Information Regulations (EIR)

Decision notice

Date: 28 February 2023

Public Authority: London Borough of Richmond upon Thames
Address: 44 York Street
Twickenham
TW1 3BZ

Decision (including any steps ordered)

1. The complainant requested information from the London Borough of Richmond upon Thames ("the public authority"). The public authority originally claimed not to hold any information within scope, before it then revised its position to rely on section 12 (cost limit) of FOIA.
2. The Commissioner's decision is that the requested information is environmental as defined by the EIR. The Commissioner has determined that the public authority was entitled to refuse the request by virtue of the exception in Regulation 12(4)(b) – manifestly unreasonable. The Commissioner also finds that the public authority complied with its obligations under regulation 9 of the EIR to offer advice and assistance. As the public authority failed to rely on an EIR exception within 20 working days, it breached regulation 14(2) of the EIR.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 26 November 2021, the complainant made the following request for information to the public authority:

"The Burtons Road Hampton Hill Area Study-Traffic Reducing Measures Trial which went live on the 21st September 2020 and the fully elapsed 6 month period which ended on the 21st March 2021 was implemented by way of an experimental traffic regulation order under which

objections may be made to the order being made permanent and such objections must be made within 6 months of the day that the experimental order comes into force.

1 How many objections to the above trial were received as at the close of business on the 21st March 2021 please.

2 Please provide a road by road breakdown of the above number."

5. The public authority originally refused to provide the requested information as it said it was not held. It then revised its position to instead rely on section 12 (cost limit) of FOIA.

Reasons for decision

Regulation 12(4)(b) – manifestly unreasonable

6. The public authority refused to provide the information sought by the request on the basis of section 12(1) of FOIA, however, as the requested information concerns responses to a consultation about traffic reducing measures, the Commissioner considers that this request should have been handled under the EIR. The Commissioner put this argument to the public authority and it accepted that the request should have been handled under the EIR.
7. This reasoning covers whether the public authority is entitled to rely on regulation 12(4)(b) of the EIR to refuse to provide the information requested.
8. 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.
9. 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. A request can be refused as manifestly unreasonable either because it is considered to be vexatious, or on the basis of the burden that it would cause to the public authority.
10. There is no definition of "manifestly unreasonable" under the EIR, but in the Commissioner's opinion, manifestly unreasonable implies that a request should be obviously or clearly unreasonable. One such way a request could be manifestly unreasonable is if a public authority is able to demonstrate that the time and cost of complying with the request is obviously unreasonable.

11. Regulation 12(4)(b) of the EIR exists to protect public authorities from exposure to a disproportionate burden in terms of the amount of time and resources that a public authority has to expend in responding to a request. In effect, it is similar to section 12(1) of FOIA, where the cost of complying with a request exceeds the appropriate limit.
12. As the Commissioner's guidance on regulation 12(4)(b)¹ explains, whilst the section 12 cost provisions in FOIA are a useful starting point in determining whether the time and cost of complying with the request is obviously unreasonable, they are not determinative. Under the section 12 cost provisions the appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £450 for public authorities such as the public authority in question. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours.
13. However, as noted the section 12 provisions are not determinative in deciding whether a request is also manifestly unreasonable. Furthermore, in assessing whether the cost or burden of dealing with a request is 'too great' under the EIR, public authorities will need to consider the proportionality of the burden or costs involved and decide whether they are clearly or obviously unreasonable.
14. The public authority explained that, whilst it had previously carried out a similar exercise to analyse information from representations received from the consultation in question, it did not capture the date of receipt for each representation as specified in the request and would need to repeat the analysis. The public authority considers that the cost of complying with this request would exceed the appropriate limit under FOIA and, by extension, would prove too burdensome to handle under the EIR.
15. The public authority explained that it would first need to review and extract the requested information from 332 representations from unique individuals that had been received. As multiple submissions from the same individuals had been submitted over the course of the consultation, it would need to check approximately an additional 700

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

entries and each submission would need to be reconciled in order to answer the complainant's question about the date the representation had been received. The public authority explained that unfortunately, upon receipt of each representation, its administrative team logged each one as a new representation, rather than reconciling it against existing entries at that stage. The public authority added that the date of receipt of each representation was not captured during its previous analysis of the data as the original consultation date had been extended.

16. The public authority confirmed that the information was held electronically and estimated that recording a date of receipt and extracting the relevant information of the 332 representations would take 2 minutes and 30 seconds per record ($2.5 \times 332 = 13.8\text{hrs}$). The process of cross referencing the data against all additional records to establish whether their first representation came in prior to the date requested was estimated to take one minute per record ($700 \times 1 = 11.6\text{hrs}$). The public authority explained that it had previously carried out a similar analysis in October 2021, and the individuals who provided the costs estimates were best placed to accurately make them, as they had detailed working knowledge of the information and had already undertaken the task that would be required.
17. The Commissioner is satisfied that the public authority's arguments above are justified because it has explained that the reasonably estimated cost for obtaining the requested information would cause burden and divert resources from day to day activities. The request would take more than 25 hours to answer, which is over a third beyond the upper limit of 18 hours specified under the comparable FOIA cost regime for a public authority of this nature.
18. The Commissioner's decision is therefore that it would be manifestly unreasonable, on the grounds of cost and the burden that would be placed on its resources, for the public authority to comply with the request.

Public interest Test

19. Regulation 12(4)(b) of the EIR is subject to a public interest test, as required by regulation 12(1)(b), and so the Commissioner must decide whether the public interest in maintaining the exception is stronger than that in complying with the request.
20. Following the Commissioner's intervention, the public authority considered the factors in favour of disclosure. It recognised the interest to the applicant, as well as potentially local residents, and considered that the interest appeared to be due to the fact that the date specified in the request represents the end of a six month period, which is a

minimum timeframe for such experimental orders. The public authority explained that orders of this nature are, however, routinely extended, at which point, the original minimum end date becomes irrelevant to the decision making process – hence there being no business need to have recorded it during the lengthy analysis process.

21. The public authority considered that, in the event that there were circumstances giving rise to suspicions of impropriety in the process, there would be some interest in reassuring the public that these were unfounded. In the circumstances, however, it felt that the process was unexceptional and in line with the requirements of the underlying legislation.
22. The public authority then considered factors in favour of maintaining the exception. It considered that the significant amount of time it would take to extract the information would require key officers to be diverted from essential work, and would in turn impact the public authority's ability to deliver best value for taxpayer's money.
23. The public authority explained that, at the time of analysing the many responses received, there was no reason to have considered only those received in the first six months because that isn't how an experimental order works. Whilst there is a minimum six month period within which the public authority is to consider representations, it is also able to consider any received that come in after that period, up until a point when they are summarised and the report is written – up to a maximum period of 18 months. In this case, this was sometime after the minimum six months. For that reason, the public authority did not breakdown its summary by date because there was no reason to do so. Whether the representation came in before or after the six month period was irrelevant in terms of its summary analysis and subsequent decision making.
24. On balance, the public authority determined that, whilst there may be a degree of interest in how the decision making process might have been affected by the analysis taking place at a different date; given that it is common practise – as well as in line with the underlying legislation – to consider submissions after the minimum timeframe; without any reason to suggest impropriety in the decision making process, the public interest is viewed as being limited to speculative in nature. This, when considered against the significant amount of valuable officer time the reanalysis would take, favours maintaining the exception.
25. The Commissioner has found that complying with the request would be a burden to the public authority that is disproportionate to the request's value – its value to the complainant and to the wider public. To come to that decision he took account of the EIR's presumption of disclosure and

the wider circumstances including those that the complainant has described. Because he has found that the value of the request is disproportionate to the burden involved in complying with it, it follows that the public interest must favour protecting the public authority's resources and allowing the public authority to direct its resources more appropriately.

Regulation 9 – advice and assistance

26. 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.
27. The Commissioner notes that the public authority advised that it could provide some of the information relevant to the complainant's request from its analysis of the consultation data of October 2021, if the complainant wished to make such a request. The Commissioner is therefore satisfied that the public authority met its obligations under regulation 9 of the EIR.

Other Matters

28. The Commissioner notes that the public authority handled the request under FOIA, but considers the EIR to be the most appropriate access regime for this kind of request.

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: 0300 1234504

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

**Michael Lea
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Wycliffe House
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