

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 November 2023

Public Authority: Somerset County Council
Address: County Hall
The Crescent
Taunton
Somerset
TA1 4DY

Decision (including any steps ordered)

1. The complainant has requested information from Somerset County Council ('the Council') regarding land clearance and soil surveys.
2. The Commissioner's decision is that the Council was entitled to rely on regulation 12(4)(b) when refusing to provide the requested information.
3. The Commissioner also finds that the Council breached regulation 7(3) by failing to notify the complainant of an extension within 20 working days.
4. The Commissioner does not require further steps.

Request and response

5. On 30 March 2023, the complainant wrote to the Council and requested information in the following terms:

"1. I would like all information relating to the two contacts logged that you mention in your reply. Specifically:

- a. What was the nature or basis of each contact (if not complaints), and what was the medium of each contact (i.e. phone call, email, meeting, letter etc)?

b. Who did each contact originate from (in the case of needing to protect any individual privacy, please at a minimum specify the type or representation of each contact – i.e. local resident, developer, contractor, council employee etc)?

c. Please provide complete copies of each contact log text / message etc (i.e. copy of email, phone recording, transcript, meeting notes etc – feel free to redact any sensitive personal information)

2. Please clarify the exact dates of any decisions and/or instructions given to contractors regarding the clearance of Packsaddle Community Fields and please include complete copies of those internal deliberations, decisions and/or external instructions.

3. Please also clarify the exact dates that clearance activities were undertaken on Packsaddle Community Fields, since 2021.

4. I note that you did not answer my question regarding how many times in the last 5 years (prior to recent clearance), that SCC undertook or instructed site clearance at Packsaddle Community Fields. While I note your comments about the occasional presence of ponies, could you please confirm the number of times any actual clearance activities were undertaken? Please also provide details regarding those instances, including complete copies of communication, dates, work done, contractors instructed etc.

5. Regarding your response to part of the works being done for soil surveys 'in that same week', please could you clarify what 'same week' is your response referring to? Further to the issue:

a. Is your response inferring that the part of the clearance work done for soil surveys was a secondary consideration after clearance had already been organised?

b. Precisely what parts of the Packsaddle fields was clearance required for undertaking soil surveys?

c. Who requested and/or instructed for these works to be done (please indicate if these requests and/or instructions originated from the developer or SCC, or other party), and please include copies of all communications or notes relating to this.

6. Were decisions taken to clear the site primarily on the basis of the contact log communications mentioned, or for soil or other development-related surveys? What precisely was the hierarchy and/or range of consideration given relating to the clearance of the site in 2022?

7. What specific consideration, instruction, or mitigation measures were discussed internally, or with any parties in relation to how any clearance activities would affect the ecological survey being undertaken? Please include complete copies of all communications or notes relating to this.
 8. Please send us any SCC policies, standards or guidelines that relate to the standards or procedures expected in relation to any pre-development ecological surveys for sensitive or potentially sensitive sites.
 9. Please provide all communications or meeting notes held by SCC relating to the weighting or consideration of site clearance motivations, commercial sale interests, ecological survey issues, or any other factors that the council considered prior to instructing contractors to clear Packsaddle Community Fields in 2022.
 10. Please provide all communications between any SCC employees and any councillors or other interested political representatives relating to the clearance of Packsaddle Community Fields since 2021. I would like both a log of such communications and complete copies of those email exchanges, telephone transcripts, or meeting notes.
 11. Please provide all communications between SCC and LiveWest relating to the clearance of Packsaddle Community Fields (or any consultant or contractor representing or working for LiveWest), since 2021. Please provide complete copies of any communications (including email exchanges, telephone transcripts, or meeting notes etc)."
6. The Council responded on 23 May 2023. It provided some information to the complainant.
 7. Following an internal review the Council wrote to the complainant on 11 July 2023. The Council advised that some of the requested information was not held and that information for questions 10 and 11 remaining was exempt due to exceeding the cost limit.

Scope of the case

8. The complainant contacted the Commissioner on 14 July 2023 to complain about the way their request for information had been handled.

9. The Commissioner considers the scope of his investigation is to consider whether the information requested in parts 10 and 11 of the request is exempt from disclosure under regulation 12(4)(b).
10. If the Commissioner is satisfied that the Council was not entitled to rely on regulation 12(4)(b), he will then consider whether, on the balance of probabilities, it holds any additional information within the scope of the request.

Reasons for decision

Is the requested information environmental?

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. Although he has not seen the requested information, as it is information relating to site clearance and ecological surveys, the Commissioner believes that the requested information is likely to be information on measures designed to protect the elements of the environment. For procedural reasons, he has therefore assessed this case under the EIR.

Regulation 12(4)(b) – manifestly unreasonable requests

13. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose environmental information to the extent that the request for information is manifestly unreasonable.
14. There is no definition of 'manifestly unreasonable' under the EIR, but the Commissioner's opinion is that 'manifestly' implies that a request should be obviously or clearly unreasonable for a public authority to respond to in any other way than applying this exception.
15. In the Commissioner's view, the key question for public authorities to consider when determining if a request is manifestly unreasonable is whether the value and purpose of the request justifies the burden that would be placed upon the authority in complying with it.
16. The Freedom of Information and Data Protection (Appropriate Limit and Fees) sets out an appropriate limit for responding to requests for information under FOIA. The limit for local authorities is £450, calculated at £25 per hour. This applies a time limit of 18 hours. Where the authority estimates that responding to a request would exceed this limit, it is not under a duty to respond to the request.
17. Although there is no equivalent limit within the EIR, in considering the application of regulation 12(4)(b), the Commissioner considers that public authorities may use the section 12 limits as an indication of what Parliament considers to be a reasonable burden to respond to EIR requests. However, the public authority must then balance the cost calculated to respond to the request against the public value of the information which would be disclosed before concluding whether the exception is applicable.
18. The Council explained to comply with just questions 10 and 11 would be manifestly unreasonable. It stated that initially key staff checked for any emails/SharePoint documents which would fall into the scope of the requests, however nothing was held.
19. The Council explained that following this, the information governance team had performed a search of the Council's server using the search term of "Packsaddle" for question 10 which returned 46,817 items. The Council then used "Packsaddle" and "LiveWest" for question 11 which generated a total of 6675 items.

20. The information governance team advised that to retrieve the emails from the server, ascertain if they fall into the scope of the request and extract an email would take approximately 30 seconds per email.
21. For question 11 alone, the Council advised it would take a total of 55 hours to review 6675 emails, which would cost the Council £1,375. The Council advised that for question 10, it would take a total of 390 hours which would amount to £9,750 worth of work.
22. The Council confirmed that it had used the quickest searching method available to try and retrieve the requested information within the cost limit, but this was ultimately not possible.
23. Given that authorities can also take into account the costs of considering whether any exception should be applied to the requested information, and also given the size and resources available to the council, the Commissioner concludes that regulation 12(4)(b) is engaged; this is because he is satisfied that responding to the request would create a disproportionate burden upon the council.
24. However, under the EIR, if regulation 12(4)(b) is engaged, the Commissioner must still consider whether the public interest rests in favour of the request being responded to in spite of the fact that the exception is engaged. The test is whether, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
25. When carrying out the test, regulation 12(2) requires a presumption towards the disclosure of the information.

The public interest test

26. The Council explained that there was specific local interest in the sale of land in question and disclosing this information would address that interest, and the general public interest in public authorities being open and transparent.
27. The Commissioner recognises that disclosing the requested information will grant members of the public with an understanding on why/how the Council came to the decision of clearing the land in question.
28. The complainant explained that disclosing the requested information would allow residents to know why/who instigated the clearance and the destruction to the wildlife habitats.
29. The Council explained that disclosing the requested information would place a large burden on it. It would require a disproportionate amount of time, effort and resources to be diverted away from other important

tasks. The Council stated that it is already actively responding to formal requests and further requests for information regarding this matter.

30. The Council explained that withholding the information allows the Council to protect the 'public purse' by preventing a large sum of money being diverted into one request for information.
31. The Council advised that there is already a significant amount of information in the public domain regarding the disposal of land. This includes the planning statements, proposed layout, reports and the planning application, which was publicly available for consultation and received 290 comments.

The Commissioner's decision

32. In this case, having considered the above, the Commissioner is satisfied that for the public interest lies in the exception being maintained. The central public interest in the exception being maintained relates to preserving the Council's resources. It is not in the public interest to require an authority to respond to a disproportionate request which places a significant burden on it, but which would not provide information of significant value to the public. In addition, there is already information about this planning matter in the public domain, and it was the subject of a consultation.
33. Even where a request would provide information of value to the public, it is not in the public interest to require the authority to fully respond to the request where it would cause such a burden on the authority that this would significantly affect its ability to carry out its other functions.
34. As the Commissioner is satisfied that the Council was entitled to rely on regulation 12(4)(b) for questions 10 and 11, he does not need to consider whether any further information is held.

Procedural matters

35. Under regulation 5(2) of the EIR a public authority is required to provide a response within 20 working days. Under regulation 7 of the EIR, a public authority can extend the time for response by a further 20 working days (so allowing them 40 working days in total) to respond to complex or voluminous requests.
36. Regulation 7(3) of the EIR requires a public authority to notify the applicant that it requires an extension as soon as possible and no later than 20 working days from receipt of the request.
37. The Council did not contact the complainant within 20 working days to extend the time for the request and therefore breached regulation 7(3).

Right of appeal

38. 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

39. 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.
40. 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

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF