

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

Date: 20 May 2024

Public Authority: Birmingham City Council
Address: Council House
Victoria Square
Birmingham
B1 1BB

Decision (including any steps ordered)

1. The complainant requested information from Birmingham City Council ("the Council") relating to the suspension of two parking bays. The Council has refused the request under regulation 12(4)(b) of the EIR (manifestly unreasonable) on the grounds that to comply with the request would incur unreasonable costs.
2. The Commissioner's decision is that the Council is not entitled to refuse the request under regulation 12(4)(b) of the EIR (manifestly unreasonable), on the grounds that to comply with the request would incur unreasonable costs, as the exemption is not engaged.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the request, which does not rely on the exception at regulation 12(4)(b) of the EIR.
4. The public authority must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 7 September 2023, the complainant wrote to the Council and requested information in the following terms, regarding the continued suspension of two parking bays on Kings Heath High Street:

“I would like to understand the decision process that led to the Council leaving the barriers in place, which illegally blockaded these parking bays on Kings Heath High Street once the temporary TRO had ended. I would like to see copies of all correspondence, including emails, between Council Officers and the two Brandwood and Kings Heath Ward Councillors, that led to these barriers being left in situ from November 2021 onwards.”

6. The Council responded on 6 November 2023. It stated that it had released a statement on 6 September 2023, “regarding the legitimacy of barriers which remained in place to suspend two parking bays on Kings Heath High Street”. It refused the complainant’s request for copies of correspondence that led to the barriers being left in situ, citing section 12 of FOIA (cost limit) as its basis for doing so.
7. The complainant requested an internal review on 6 November 2023. They reminded the Council of its obligation to provide reasonable advice and assistance under section 16 of FOIA and asked the Council to provide advice about how to refine their request to bring it under the cost limit.
8. Regarding the scope of their request they also stated:

“I will remind you that my Freedom of Information requested to the decision to leave the High Street parking suspended after November 2021, when the Temporary Traffic Regulation Order (TTRO) had lapsed. It does NOT relate to the decision to suspend the parking bays in May 2020 under a TTRO which your response implies your were seeking documentation on and probably explains the excess cost estimate.”

9. The Council provided an internal review on 23 November 2023 in which it maintained its original position and stated that it considered it was not possible to refine the request to bring it under the cost limit as, “the request was so specific in seeking information relating to parking bays on a specific road”.
10. During the course of his investigation the Commissioner asked the Council to reconsider the request under the EIR as he considers that the information requested is environmental information as defined in regulation 2(1)(c) of the EIR. Specifically, he considers parking

restrictions, which the requested information relates to, to be a measure that is likely to affect the air and atmosphere.

11. The Council issued a fresh response to the complainant on 27 February 2024 in which it refused the request under regulation 12(4)(b) of the EIR (manifestly unreasonable) on the grounds that to comply with the request would incur unreasonable costs.

Reasons for decision

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

12. 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.
13. 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.
14. 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.
15. The Freedom of Information and Data Protection (Appropriate Limit and Fees) ("the Fees Regulations") sets out an appropriate limit for responding to requests for information under FOIA. The limit for local authorities, such as the Council, 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.
16. As well as setting out the actual limits, the Fees Regulations explain what activities public authorities can take into account when estimating the cost of compliance. Those activities are limited to:
 - determining whether it holds the information;
 - locating that information or a document which may contain the information;
 - retrieving the information or a document containing it; and
 - extracting the information from a document containing it.

17. Although there is no equivalent limit within the EIR and the Fees Regulations do not apply in relation to the EIR, in considering the application of regulation 12(4)(b), the Commissioner considers that public authorities may use the FOIA section 12 limits and the Fees Regulations 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 of complying with the request against the public value of the information which would be disclosed before concluding whether the exception is applicable.
18. It is also important to note that, although not permitted under FOIA, the Commissioner's guidance is clear that the costs of considering if information is covered by an exception can be taken into account as relevant arguments under regulation 12(4)(b) of the EIR.¹
19. The Council has stated that it has identified 3300 documents as potentially being in scope of the request and that it estimates it would take five minutes per document to extract the information within scope of the request and redact any exempt information. It therefore estimates that it would take 275 hours to comply with the request, which is well in excess of the time limit of 18 hours which serves as an indication of a reasonable burden to respond to an EIR request.
20. The Commissioner must determine whether this is a reasonable estimate. The estimate should be sensible, realistic and supported by cogent evidence. It should be based on the quickest method of gathering the information requested, considering how the public authority actually holds its records.
21. The complainant disputes that 275 hours is a reasonable estimate. They have stated that they do not believe the estimate of 3300 documents as potentially being in scope is correct, they believe this is excessive. They stated, "Between September and November 2021, when the TTRO was coming to an end, there would have been a discussion between, at most, three Highways Engineers and the two local Councillors, about what they should do. This would not amount to 3300 documents but would instead amount to about 50 emails conversations and documents." As noted in their request for internal review, as quoted in paragraph 8, the complainant is concerned that some of the documents identified may relate to the original decision to suspend the parking

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/regulation-12-4-b-environmental-information-regulations-manifestly-unreasonable-requests/#differences>

bays, rather than their continued suspension beyond November 2021, which is the matter about which they have requested information.

22. The complainant has queried whether the Council has used appropriate search terms and suggested that it may have used broad search terms such as "High Street" and "Kings Heath" which would return a high number of results that are not in scope of the request.
23. During the course of his investigation the Commissioner asked the Council to provide more details about how it reached its estimates of 3300 documents and 275 hours.
24. Regarding how it reached its estimate of 3300 documents, the Council explained that it had carried out a search of the emails of one of the eleven members of staff identified as having been involved in the project using the search terms "TTRO", "Temporary Traffic Regulation Order", "parking bays" and "Kings Heath High Street". This identified "between 300-400" emails related to Traffic Regulation Orders and Kings Heath High Street works. It then took the lower number of 300 and multiplied this by the eleven members of staff, as it considered they would all hold a similar number of emails, to produce the estimate of 3300 documents to be considered as potentially in scope.
25. From the description of the searches that the Council provided in its submissions to the Commissioner, it appears that rather than restrict its searches to emails sent to or from the two Brandwood and Kings Heath Ward Councillors on this matter, in line with the scope of the request, it has instead considered all emails held on the matter.
26. The Commissioner would expect restricting the searches of staff emails to emails sent to or from the two Brandwood and Kings Heath Ward Councillors, in line with the scope of the request, to reduce the number of emails returned by the search as potentially within scope of the request to a number much lower than 3300.
27. The Commissioner therefore does not accept 275 hours to be a reasonable estimate of the time it would take to comply with the request and he is not satisfied that responding to the request would create a disproportionate burden upon the Council.
28. The Commissioner is also not satisfied that the Council has demonstrated that the complainant's request was manifestly unreasonable and hence his decision is that regulation 12(4)(b) is not engaged.
29. As regulation 12(4)(b) is not engaged, the Commissioner has not gone on to consider the public interest test. At paragraph 3 above the Council is required to issue a fresh response to the request.

Right of appeal

30. 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

31. 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.
32. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Victoria James
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