

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

### **Decision notice**

**Date:** 21 May 2024

**Public Authority:** South Kesteven District Council  
**Address:** Council Offices  
The Picture House  
St Catherine's Road  
Grantham  
NG31 6TT

#### **Decision (including any steps ordered)**

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1. The complainant has submitted a request to South Kesteven District Council (the council) for information relating to specific planning applications.
2. The Commissioner's decision is that the council is entitled to rely on regulation 12(4)(b)(manifestly unreasonable) to refuse to provide the requested information. However, the Commissioner finds that the council did not comply with its obligations under regulation 9(1) of the EIR to offer advice and assistance. The Commissioner has also concluded that the council breached regulations 5(2) and 14(2) of the EIR by failing to respond and issue a refusal notice to the request within 20 working days.
3. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
  - Provide the complainant with advice and assistance to help them submit a less burdensome request.

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**

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5. On 20 July 2023, the complainant wrote to the council and requested information in the following terms:

“Records relating to S22/1953 and ancillary S23/0661; S23/0627:

All paper communications (including notes of telephone conversations and memorandums) and all electronic communications (including emails and recordings) relating to the above numbered applications between:

1. The Stamford Endowed Schools and/or it’s agents and the Council represented by either it’s Officers or Councillors; and
2. The Officers of the Council and its Councillors.

FOR THE AVOIDANCE OF DOUBT this request EXCLUDES any document, plan, drawing, report, representation and decision published on the Council website AND all third party objections to the above numbered applications.”

6. On 21 September 2023, the council provided a response in which it refused to provide the requested information, relying on regulation 12(4)(b) of the EIR.
7. Upon receiving this response, the complainant submitted an internal review request on 23 September 2023. On 3 November 2023, the council provided its internal review response in which it maintained its original position.

## **Reasons for decision**

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### **Is the requested information environmental?**

8. Regulation 2(1)(c) of the EIR states that environmental information includes information on:

"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."

9. The Commissioner has considered the wording of the request. He notes that the complainant states that the request does not include "any document, plan, drawing, report, representation and decision published on the Council website AND all third party objections to the above numbered applications." Therefore, the complainant believes the request should not have been considered under the EIR.
10. However, as the request is for correspondence related to specific planning applications, which is a measure likely to affect the elements of the environment, the Commissioner has therefore assessed the case under the EIR.
11. This decision notice therefore considers whether the council was entitled to rely on the exception provided by regulation 12(4)(b) of the EIR.

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

12. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose the 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. Although there is no equivalent limit within the EIR, the Commissioner considers that public authorities may use equivalent figures as an indication of what Parliament considers to be an unreasonable burden, when responding to EIR requests. However, the public authority must balance the estimated costs against the public value of the information which would be disclosed, before concluding whether the exception is applicable.
17. Under the Regulations, in estimating the time and burden involved in responding to a request, the public authority may take account of the time it would take to:
  - determine whether it holds the information;
  - locate that information or a document which may contain the information;
  - retrieve the information or a document containing it; and
  - extract the information from a document containing it.
18. Furthermore, unlike FOIA, under the EIR, 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.

### **The complainant's position**

19. In correspondence to the Commissioner, the complainant states that "there should be a relatively small volume of correspondence that could be supplied at well below the cost threshold."

### **The council's position**

20. In its initial response to the complainant, the council stated that the biggest cost is likely to be staff hours.
21. In expanding on this, the council explained that it had searched the council's email system and had located 5,852 emails referencing the case numbers or Stamford Endowed or the email addresses for the applicant/agent.
22. The council further explained that if it were to keep to the 18-hour time limit, this would only allow it 18 seconds to review each of the emails to establish if they were in scope and if they could be released.
23. In its brief submissions to the Commissioner, the council stated that it would more likely take 30 seconds to review each record, which would equate to 48.76 hours.

### **The Commissioner's position**

24. The Commissioner notes that the request is quite broad in that it is asking for copies of all electronic and paper correspondence referencing the case numbers, and the organisations identified.
25. The Commissioner accepts that the council would need to manually review each email to both determine whether it falls within scope of the request, and then go on to consider whether any exceptions applied to the information caught by the request.
26. The Commissioner notes that the council's above estimate of 5,852 emails and 30 seconds per email, does not include any other searches which may be necessary to identify the other forms of correspondence, relevant to the request, for example telephone notes.
27. The Commissioner understands the serious intent behind the request however he must consider whether the cost of complying with the request, is disproportionate to the value of the request.
28. In light of the above, the Commissioner is satisfied that complying with the request would place a disproportionate burden on the council, both in terms of costs and resources. Therefore, the Commissioner is satisfied that the request is manifestly unreasonable and so regulation 12(4)(b) is engaged. The Commissioner will now go on to consider the public interest test.

### **Public interest test**

29. Regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions.

### **Factors in favour of disclosure**

30. The complainant raises concerns about the way the applications were dealt with, which they feel raises issues about transparency.
31. The council recognises that there is an inherent public interest in environmental information and that the understanding of environmental matters "contributes to a more informed public debate and holds public authorities to account for their decisions."

### **Factors in favour of maintaining the exception**

32. The council considers that there is no public interest in spending the "significant hours" identified to retrieve and review the enforcement records, and that this would not be "conducive to the efficient running of a public service."
33. The council further explains that the searches would cause "significant disruption to officers' daily workload resulting in the delay to other planning applications or enforcement cases" and that there is a public interest in "avoiding that diversion" of its resources.

### **The balance of the public interest**

34. The Commissioner acknowledges that there is a public interest in matters relating to planning applications, especially when there have been objections raised. However, taking into account the burden that responding to the request would place on the council, the Commissioner considers that the public interest in maintaining the exception outweighs the public interest in disclosure.
35. The Commissioner is therefore satisfied that the council was entitled to rely on regulation 12(4)(b) to refuse the request.

### **Procedural matters**

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#### **Regulation 9-advice and assistance**

36. Regulation 9(1) of the EIR requires public authorities to provide advice and assistance to requestors, so far as it would be reasonable to expect the authority to do so.
37. As stated in the Commissioner's guidance<sup>1</sup>, in cases where a public authority refuses a request under regulation 12(4)(b) as manifestly unreasonable because of burden or cost, the Commissioner normally expects it to provide the applicant with reasonable advice and assistance to help them submit a less burdensome request.

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<sup>1</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/regulation-9-advice-and-assistance/#regulation9>

38. From the evidence provided, the Commissioner is not aware that the council has provided any advice or assistance to the complainant on whether it would be possible to refine or narrow their request in order to reduce the burden. If it is not possible to refine the request in a meaningful way, the council should explain why this is the case.

**Regulations 5(2) and 14(2)**

39. Under regulation 5(2) of the EIR, a public authority must make requested information available, if it's held and isn't subject to an exception, within 20 working days following the date of the receipt of the request. Similarly, under regulation 14(2) a public authority must issue a refusal notice within the same time period.

40. In this case, the complainant submitted their request on 20 July 2023 and the council provided its response on 21 September 2023.

41. In light of the above, the Commissioner therefore finds that the council breached regulations 9 (1), 5(2) and 14(2) of the EIR.

## **Right of appeal**

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42. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

43. 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.
44. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Joanna Marshall**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**