

Environmental Information Regulations (EIR)

Decision notice

Date: 2 August 2016

Public Authority: Essex County Council

Address: County Hall
Market Road
Chelmsford
Essex
CM1 1QH

Decision (including any steps ordered)

1. The complainant has made a request to Essex County Council ("the Council") for information about vehicle crossing (also known as 'dropped kerb') applications. The Council refused the request under regulation 12(4)(b) of the Environmental Information Regulations ("the EIR").
2. The Commissioner finds that the Council has correctly refused the request under regulation 12(4)(b).
3. She does not require any steps to be taken.

Request and response

4. On 13 June 2015 the complainant made an information request for:

Would you please disclose how many vehicles crossovers (dropped kerbs) have been granted where the depth of the frontage is less than 5mt.

If this should be refused on the grounds that it will be too expensive, I suggest providing the figure for Epping Forest District Council only.

5. The Council asked for clarification on 15 June 2015 about the timescale that information was sought for, and for which area within Epping.
6. On 14 July 2015 the complainant provided clarification:

Please disclose how many domestic crossover applications made to Essex County Council Highways in 2009/2012/2013/2014/2015 were granted where the required depth was not the one requested. I believe that this was 4.7mt in 2009 and 5mt in the subsequent years.

Of those that were refused how many appealed against the decision and how many were successful on appeal? Incidentally Essex County Council told me that there is no appeal procedure is it correct? Please disclose if the successful applicants on appeal were represented by a solicitor or if they were successful because they complained to the Local Government Ombudsman.

7. The Council subsequently responded on 16 July 2015 and advised that it would not be able to comply with the request in its current scope, and asked the complainant to specify which roads the information was sought for.
8. In further correspondence between the parties the Council advised that it would be able to provide the requested information for 3 roads. The complainant then contested that information for 3 roads would be insufficient.
9. The Council responded on 30 July 2015 and refused the request in its current scope under regulation 12(4)(b).
10. The complainant requested an internal review on 18 August 2015.
11. The Council provided its internal review outcome on 9 September 2015. It maintained the refusal under regulation 12(4)(b), and repeated that it would be able to provide the requested information for 3 roads.

Scope of the case

12. The complainant contacted the Commissioner on 6 December 2015 to complain about the Council's refusal under regulation 12(4)(b).
13. The Commissioner therefore considers the scope of this case to be whether the Council has correctly refused the request under regulation 12(4)(b).

Reasons for decision

Context

14. The complainant previously applied to the Council in 2009 for a vehicle crossing, but was refused. On the understanding that another individual's application may have been refused and subsequently allowed on appeal, the complainant has requested information about the number of applications made to the Council and of these the number that have been refused and appealed.

Is the information environmental?

15. Information is "environmental" if it meets the definition set out in regulation 2 of the EIR. Environmental information must be considered for disclosure under the terms of the EIR rather than the FOIA. Under regulation 2(1)(c), any information on activities affecting or likely to affect factors of the environment listed in regulation 2(1)(b) will be environmental information. The information requested relates to the condition of highways, which can be understood to affect factors such as noise and emissions. The Commissioner therefore considers that the request should be dealt with under the EIR.

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

16. Regulation 12(4)(b) provides that:

For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that-
(b) the request for information is manifestly unreasonable...

17. The Commissioner has issued public guidance¹ on the application of regulation 12(4)(b). This guidance contains the Commissioner's definition of the regulation, which is taken to apply in circumstances where either the request is 1) vexatious, or 2) where the cost of compliance with the request would be too great. In this case the Council considers that circumstance 2) is applicable.
18. The EIR does not contain a limit at which the cost of compliance with a request is considered to be too great. However, the Commissioner's

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

guidance suggests that public authorities may use The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Regulations") as an indication of what Parliament considers to be a reasonable charge for staff time. The regulations specify that £450 is the appropriate limit for local government authorities, and that the cost of complying with a request should be calculated at £25 per hour; this applies a time limit of 18 hours.

19. For the purposes of the EIR, a public authority may use this hourly charge in determining the cost of compliance. However, the public authority is then expected to consider the proportionality of the cost against the public value of the request before concluding whether the request is manifestly unreasonable.

Is the exception engaged?

The Council's position

20. The Council has informed the Commissioner that whilst it holds the information, the way in which it is held within its database does not allow the Council to easily access and collate it to answer the complainant's request.
21. The Council has confirmed that it has received approximately 3600 vehicle crossing applications for the Epping Forest district since 2010, and that these apply to 2323 'assets' (roads, footpaths, etc.). In order to retrieve and collate the information requested from the Council's database, an officer would be required to search records for each asset against a number of codes (representing 'initial inspection', 'further action required', 'declined', and 'decline appeal'). Each retrieved record would then need to be reviewed to identify whether the requested frontage depth was below the suggested minimum. The Council has found that this activity would take approximately 10-15 minutes per asset, resulting in a total time of over 500 hours.

The Commissioner's conclusion

22. The Commissioner has considered the Council's position, and in particular has noted that the information specified by the complainant cannot be automatically retrieved from the Council's database. The Commissioner has also considered the number of assets (roads, paths, etc.) that the Council would be required to individually search and collate information about, and the estimated total time that this would take.
23. On this basis the Commissioner accepts that the request is manifestly unreasonable within the meaning of regulation 12(4)(b).

The public interest test

24. Regulation 12(4)(b) is subject to the public interest test set out in regulation 12(1)(b). This specifies that a public authority may only rely on an exception if, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosure.

Public interest arguments for maintaining the exception

25. The Council considers that the request represents a private interest, and relates specifically to the complainant's own refused application. This refused application was referred to the Local Government Ombudsman in 2013, who found no evidence of fault against the Council.
26. The Commissioner is aware that the Council is able to provide the requested information for named roads, and has done so for previous requests. As such it is reasonable for the Commissioner to consider that this facility partly addresses the public interest in transparency.

Public interest arguments against the applied exception

27. The complainant argues that the process by which the Council grants permission for vehicle crossings is unclear, and believes that she has been unfairly disadvantaged through the Council's refusal of her earlier application and advice that she was not able to appeal. She has therefore requested the specified information in order to identify whether the Council is consistent in its decision making.

Balance of the public interest

28. The Commissioner recognises the inherent importance of accountability and transparency in decision-making within public authorities, and the necessity of a public authority bearing some costs when complying with a request for information. However, in considering the public interest test for this matter, the Commissioner must assess whether the cost of compliance is disproportionate to the value of the request.
29. The Commissioner has noted that the request relates to a dispute with the Council about a refused application for a vehicle crossing. Although the complainant alleges that the Council does not have a clear and fair policy for managing vehicle crossing applications, and provides anecdotal evidence of other individuals having had their applications approved, this does not in itself provide clear evidence to the Commissioner that the Council's management of such applications is inappropriate in any way.

30. The Commissioner also considers that compliance with the request in its current scope would place considerable burden upon the Council, which would need to divert public resources in order to retrieve and collate the requested information. However it is evident that this type of information can be accessed by the public when sought for specified roads, and the Commissioner is aware that the Council has previously disclosed information in response to such requests. The availability of such information suggests to the Commissioner that there is already a level of transparency provided by the Council for this type of information.
31. Having considered the relevant factors in this matter, the Commissioner has concluded that the public interest favours the maintenance of the exception.

Right of appeal

32. 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@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

33. 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.
34. 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

Andrew White
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