

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

### **Decision notice**

**Date:** 14 August 2014

**Public Authority:** Manchester City Council

**Address:** Democratic and Statutory Services  
Room 401  
Town Hall  
Manchester  
M60 2LA

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

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1. The complainant has requested information from Manchester City Council about correspondence relating to funding for High Speed 2 (HS2) stations at Manchester and Manchester Airport. Manchester City Council has relied on regulation 12(4)(b) to refuse the request.
2. The Commissioner's decision is that Manchester City Council has correctly applied regulation 12(4)(b).
3. The Commissioner notes that in its initial response Manchester City Council considered the request under the Freedom of Information Act 2000 when it should have been considered under the Environmental Information Regulations 2004. Under EIR, the council breached regulation 14(2) because it did not respond to the request within the required timeframe and regulation 14(3) because it did not specify the reason for request being refused under the appropriate legislation. The Commissioner does not require the public authority to take any further steps.

## Request and response

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4. On 13 August 2013, the complainant wrote to Manchester City Council (the council) and requested information in the following terms:

*"Under the terms of the Freedom of Information Act and the Environment Information Regulations I request that you send me copies of all correspondence including emails between your Council and*

1. *Department for Transport*
2. *HS2 Ltd*
3. *Internal correspondence*

*Concerning*

- (a) *the contribution that your council may be requested to make to support the costs associated with High Speed 2 (HS2) and*
- (b) *the contribution(s) that you are seeking from Government to assist with integrating HS2 with your local infrastructure. It should relate to the HS2 stations proposed for both central Manchester and at Manchester Airport. The date range for the correspondence should be between 1 January 2013 and the date on which this request is processed"*

5. On 10 October 2013 Manchester City Council responded. In respect of the point at (a) it referred to a Department of Transport document and advised that the City Council's response to the matter would be set out in the Council's response to a Government consultation document. The Council advised that the document would be submitted to the Government in late 2013 or early 2014. In respect of the point at (b) the response stated: *"We have not discussed the matters referred to"*.
6. The complainant requested an internal review on 9 October 2013. Manchester City Council sent the outcome of its internal review on 17 February 2014. It revised its position, advising that as a result of the request for an internal review a further search was undertaken which identified one email with attachments which was forwarded to the complainant.

## Scope of the case

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7. The complainant contacted the Commissioner on 15 January to complain about the way his request for information had been handled. In particular the complainant asserted that he felt there must have been correspondence on the subject of funding noting also that Manchester City Council is the largest shareholder of the Manchester Airport Group (MAG).
8. The council's original position led the Commissioner to begin his investigation by considering whether the council had disclosed all of the available information. During the course of the Commissioner's investigation, the council sought to rely on regulation 12(4)(b) to refuse the request. The council deemed the request to be manifestly unreasonable as the cost of complying exceeded the appropriate limit. The council wrote to the complainant outlining the reasons for its reliance on section 12(4)(b).
9. The Commissioner considers the scope of this investigation is to determine whether the council is correct to refuse the request citing regulation 12(4)(b) EIR.

## Reasons for decision

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### Is it environmental information?

10. Information is "environmental" if it meets the definition set out in regulation 2 of the EIR.

#### *"2. Interpretation"*

- (1) *In these Regulations "environmental information" has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form 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) and (b) as well as measures or activities designed to protect those elements...”*

11. The Information requested is information on measures and activities associated with HS2 and its planned integration into local infrastructure. The information therefore falls within regulation 2(1)(c) because it is information about measures which will affect the state of the elements of the environment, most notably landscape.

### **12(4)(b) – manifestly unreasonable requests**

12. Under regulation 12(4)(b) EIR, a public authority may refuse to disclose environmental information if the request for information is manifestly unreasonable. In this instance the council considers the request to be manifestly unreasonable because the cost of complying with the request is too great. This approach has been confirmed by the Upper Tribunal case of *Craven v The Information Commissioner and the Department for Energy and Climate Change [2012] UKUT442 (AAC)*, which recognised that this regulation was the nearest equivalent to the costs exemption found in the Freedom of Information Act 2000.
13. 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 guidance suggests that public authorities may use the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 as an indication of what Parliament considers to be a reasonable charge for staff time. Under that legislation, Parliament considered £25 per hour to be a reasonable hourly charge when determining the cost of staff time in responding to a request. The cost limit set out at section 3(2) is currently £450. There is also a public interest test to consider, as established under regulation 12(1)(b).
14. Prior to handling the request under the EIR, the council’s initial response to the complainant asserted that some of the information requested was intended for future publication and that for the remainder it did not hold the information as the subject had not been discussed.
15. The Council clarified its position at internal review stating that although the original response could have been clearer, the Council had, prior to responding, undertaken a search to identify relevant documents falling within the scope of the request. Various officers were asked to undertake a search for relevant material.

16. Based on the original response and the internal review response the Commissioner set out a series of questions to the council. The council submitted that as part of its internal review it had conducted a further exercise to determine if there was any overlooked correspondence falling within the scope of the request. This exercise did not return any relevant material. The council explained that the cost of researching every email would have exceeded the cost limit but rather than refuse the request solely on the basis of costs, the council conducted an electronic search of certain email accounts using key words. This was an attempt to supply information relevant to the request without undertaking an exhaustive search.
17. At the internal review stage, the Council submitted that, having undertaken an initial search which produced no results, a further search was initiated to identify if any relevant material may have been overlooked. This further search involved making enquiries of specific individuals and an electronic search using key words. The Council further submitted that this search, at internal review stage, did not produce results which were usefully narrow as it returned 1,061 results for the timeframe of the request. A sample exercise involving these emails returned no information relevant to the precise terms of the complainant's request.
18. Given these results, the council has argued that it would have been entitled to rely on section 12(4)(b) at this point but, rather than take this approach, it sought to be of assistance to the complainant by conducting a more limited examination focused on email communications which appeared, on the face of it, to have potential to fall within the scope of the request. Search terms included sender, recipient and subject heading. This search produced one email which was sent to the complainant with the internal review response.
19. The response to the Commissioner's questions introduced the application of regulation 12(4)(b). This is because the council reached a view that, in order to ensure it had retrieved information relevant to the request, it would need to examine the content of the emails and extract those which relate to the terms of the request. In practice, this would mean identifying any emails containing information about (a) the cost contribution the council may be requested to make to the HS2 project and (b) the contributions it is seeking from government to assist its integration. The Commissioner accepts that it would be necessary for the council to make these checks on the 1,061 emails in order to identify relevant information.
20. In order to estimate the time it would take to examine the 1,061 emails (including any attachments) the council relied on the sample exercise

which it stated it had undertaken at review stage. It estimated that the time taken to examine each email, and any attachment, in order to determine whether or not it fell within the scope of the request, was two minutes. This would therefore mean that examination of all 1,061 documents would take in excess of 35 hours. At a cost of £25 per hour this would equate to a figure in excess of £875 and would vastly exceed the appropriate limit.

21. Having accepted that the council undertook a reasonable search of its email system, and that it would be required to take the steps described by the council, he has gone on to consider whether the estimate is reasonable. He is satisfied that the estimate of two minutes to consider each piece of information is reasonable, and notes that in some cases it may actually require longer to read a particular email and decide whether it is relevant to the request. He notes that the information returned by the search is voluminous and that the council's estimate is nearly twice the appropriate limit. He therefore finds that the request is manifestly unreasonable and the exception is engaged.

### **Public interest test**

22. The council considered the public interest in transparency and accountability of public authorities. It considered the public interest in a greater awareness of environmental matters being fostered and also considered the public interest in protecting public authorities from an excessive administrative burden being imposed when responding to requests for information. The council concluded that the public interest in maintaining the exception outweighed the public interest in disclosure.
23. With regard to the public interest test, the Commissioner considers that there is a public interest in how public money is being spent and in public authorities demonstrating accountability for that spending. In particular the Commissioner acknowledges that HS2 is a high profile subject which is of significant public interest not least due to the associated costs. However, in terms of the costs associated with the request, in this case the Commissioner is satisfied that the costs would be disproportionate to the burden placed on the Council by this request and accordingly he finds that the factors in favour of maintain the exemption outweigh the factors in favour of disclosure.

## **Other matters**

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24. During the course of this investigation, the Commissioner wrote to Manchester City Council in order to address a series of procedural issues; consideration of the request under the incorrect legislation, the timing of the response to the request, timing of the response to the request for an internal review and the fact that the response issued did not comply with the legislation. The council has responded to the Commissioner accepting that its handling of the case fell short of its own guidance as well as the Commissioner's.
25. In light of the council's explanations that it had not begun to consider funding matters the request related to when the request was submitted, the complainant sought then to extend the timeframe of the request to 16 June 2014. The Commissioner explained that the timeframe could only be considered by the council if the complainant were to make a fresh request.

## Right of appeal

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26. 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: 0116 249 4253

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

27. 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.
28. 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 .....**

**Pamela Clements  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
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