

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

**Date:** 9 February 2015

**Public Authority:** Norfolk County Council  
**Address:** County Hall  
Martineau Lane  
NORWICH  
NR1 2DH

**Decision (including any steps ordered)**

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1. The complainant has requested information relating to statutory notices issued under the Highways Act 1980. The Commissioner's decision is that Norfolk County Council has correctly applied the exception for manifestly unreasonable requests at Regulation 12(4)(b) of the EIR.

**Request and response**

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2. On 14 August 2014, the complainant wrote to Norfolk County Council ('the council') and requested information in the following terms:  
  
"Could you please advise details of any statutory notices issued under the Highways Act 1980 such as those issued under Sections 152, 154, 167 and 230 (and any other sections as appropriate) that remain open i.e. where the matter has not been resolved by the property/land owner.

Please provide the following information for each notice:

Date issued  
Legislation and Section issued under  
Reason for issue  
Postcode of the address the notice relates to

If you need further clarification, please do not hesitate to contact me.”

3. The council responded on 18 August 2014 and refused to provide the requested information on the grounds that it would take in excess of the 'appropriate limit' as stated in the Freedom of Information & Data Protection (Appropriate Limit & Fees) Regulations 2004. It also said that the complainant may wish to refine and resubmit the request so that it reduces the cost to within the "appropriate limit" and asked the complainant to contact the council if advice is required on refining the request.
4. The complainant requested an internal review on 28 August 2014. The council provided its internal review response on 7 November 2014. It revised its position stating that the information is environmental and that the exception at Regulation 12(4)(b) of the EIR applies due to the resources needed to respond to the request. It also informed the complainant that information regarding individual properties is available free of charge on request from the council via the Information Management Service or can be obtained via the council's enhanced property search service for a small fee.

### **Scope of the case**

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5. The complainant contacted the Commissioner on 10 November 2014 to complain about the way her request for information had been handled.
6. The Commissioner has considered the council's application of Regulation 12(4)(b).

### **Reasons for decision**

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

7. Regulation 12(4)(b) of the EIR provides that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable.
8. In this case, the council cited this exception on the ground that the cost of dealing with the request is too great.
9. The EIR differ from the FOIA in that no specific limit is set on the amount of work required by an authority to respond to a request as provided by section 12 of the FOIA. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the fees

regulations) which apply in relation to section 12 of the FOIA are not directly relevant to the EIR - the cost limit and hourly rate set by the fees regulations do not apply in relation to environmental information. However, the Commissioner accepts that the fees regulations provide a useful starting point where the reason for citing regulation 12(4)(b) is the time and cost of a request but they are not a determining factor in assessing whether the exception applies.

10. The Commissioner is satisfied that Regulation 12(4)(b) sets a fairly robust test for an authority to pass before it is no longer under a duty to respond. The test set by the EIR is that the request is 'manifestly' unreasonable, rather than simply being 'unreasonable' per se. The Commissioner considers that the term 'manifestly' means that there must be an obvious or clear quality to the identified unreasonableness.
11. It should also be noted that public authorities may be required to accept a greater burden in providing environmental information than other information. This was confirmed by the Information Tribunal in the DBERR case<sup>1</sup> where the tribunal considered the relevance of regulation 7(1) and commented as follows (paragraph 39):

"We surmise from this that Parliament intended to treat environmental information differently and to require its disclosure in circumstances where information may not have to be disclosed under FOIA. This is evident also in the fact that the EIR contains an express presumption in favour of disclosure, which FOIA does not. It may be that the public policy imperative underpinning the EIR is regarded as justifying a greater deployment of resources. We note that recital 9 of the Directive calls for disclosure of environmental information to be "to the widest extent possible". Whatever the reasons may be, the effect is that public authorities may be required to accept a greater burden in providing environmental information than other information."

12. Therefore, in assessing whether the cost or burden of dealing with a request is clearly or obviously unreasonable, the Commissioner will take the following factors into account:
  - Proportionality of the burden on the public authority's workload, taking into consideration the size of the public authority and the resources available to it, including the extent to which the public authority would be distracted from delivering other services.

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<sup>1</sup> Department for Business Enterprise and Regulatory reform v The Information Commissioner and Platform. Appeal no. EA/2008/0097

- The nature of the request and any wider value in the requested information being made publicly available.
  - The importance of any underlying issue to which the request relates, and the extent to which responding to the request would illuminate that issue.
  - The context in which the request is made, which may include the burden of responding to other requests on the same subject from the same requester.
  - The presumption in favour of disclosure under regulation 12(2);
  - The requirement to interpret the exceptions restrictively.
13. The council said that the request is a very broad one covering the whole of the county and asking for detailed information regarding a range of statutory notices issued under the Highways Act 1980, including a request for it to identify "any other relevant" statutory notices. It explained that The Highways Act 1980 contains a number of sections that confer powers on a local highway authority which relate to the construction, improvement and maintenance of the public highway. It said that many other sections relate to powers of enforcement and that some sections are used more regularly than others, for example S137; some rarely or not at all, as is the case with the specific sections referred to by the complainant.
14. It further explained that generally each legal process is managed by the member of staff dealing with the offence and the information is stored in the general parish filing system during and after the completion of the process. It said that statutory notices are dealt with in the same way as general correspondence so the files contain a large number of records relating to a wide variety of issues including statutory notices.
15. It also said that the complainant has made an assumption that the council follows up all statutory notices issued and keeps a register of such notices in order to do this which is not the case. It confirmed that it does not follow up all statutory notices, some are just filed in the Parish records once they have been issued, and does not keep any such register or database. It explained that it has recently begun to save information electronically in files organised by parish, but the bulk of the information is held in manual files, also organised by Parish.
16. The council maintains that in order to provide information regarding the four sections quoted specifically, it would need to search through an estimate of 400 Parish files, but maybe as many as 540, to find the statutory notices. It said that it may be possible to carry out a key word

search on the electronic files but as previously stated, these are only very recent. It said that it would need 10 minutes per file to locate the information requested and based on the lower estimate of 400 files, it would take approximately 67 hours.

17. The complainant has said that she is being denied access to information due to the council's poor record keeping and that not monitoring the result of any statutory notices issued constitutes a degradation of duty. The Commissioner would like to draw attention to the fact that the EIR is concerned with recorded information that is actually held by a public authority, not what a complainant believes should be held. He does not have the jurisdiction to consider whether not monitoring the result of any statutory notices issued constitutes a degradation of duty.
18. In relation to the burden imposed by this request, the Commissioner accepts the council's explanation as to why all the parish files would need to be searched, and considers that even if the council's estimate of 10 minutes per file was halved to 5 minutes per file, and based on the lower estimate of 400 files, it would still take 33 hours to deal with the request which the Commissioner considers to be a significant burden.
19. The council has said has limited resources to deliver services to the county as a whole and needs to focus these resources in the most cost-effective way to ensure it can meet its statutory responsibilities and that responding to this request would divert officer time away from the delivery of those services.
20. The council also said that it should be noted that it has received further requests from the complainant for county-wide information regarding other similar matters such as the adoption status of public highways and details of any approved, but not yet implemented Traffic Regulation Orders. However, the council did not provide details of whether such requests have been responded to, and the burden this may have imposed.
21. In relation to the value of the request, the council explained that the information would only be current at the time that it was supplied. It said that if it was supplied to a potential purchaser of a property following that date, the information would no longer be up to date and in order for a purchaser to obtain reliable information they would need to request the information in relation to the specific property again. The Commissioner considers that this reduces any wider value in the requested information being made publicly available.
22. The Commissioner has taken into account the presumption in favour of disclosure and the requirement to interpret the exceptions restrictively and accepts that when an exception from the EIR is cited, the

arguments in favour of the citing of that exception must be sufficiently compelling to outweigh these factors. However, in the particular circumstances of this case, the Commissioner has found that the time and cost of dealing with the request would impose a disproportionate burden upon the council when weighed against the value of the requested information being made public. He therefore considers that the exception is engaged and has gone on to consider the public interest test inherent in this exception.

### **Public interest test**

23. All exceptions in the EIR are subject to the public interest test. Therefore, in deciding whether the information should be withheld the Commissioner has had to balance the public interest in maintaining the exception against the public interest in disclosure.
24. In relation to the public interest in disclosure, the council said that it recognises that generally increased public access to environmental information and the dissemination of such information contribute to a greater awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision-making and, eventually, to a better environment. It also said that it recognises that in order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and wellbeing, and in accordance with these aims, notes that it is in the interests of members of the public to have access to accurate and up to date information when considering the purchase of a property. However it said it has concerns about whether access to information in the manner contemplated by the request would actually achieve these aims, for the reasons stated below.
25. In relation to the public interest in maintaining the exception, the council has said that the time required to locate information regarding statutory notices for the whole of Norfolk would divert officers away from other statutory responsibilities which serve the wider public. It further explained that it has limited resources which it must ensure are used to the greatest advantage to the people of Norfolk as a whole.
26. As mentioned above, the council said that the information would only be current at the time that it was supplied and that in order for a purchaser to obtain reliable information they would need to request the information in relation to the specific property again which would result in duplication of work, diverting further resources away from other statutory duties.
27. Again, as mentioned above, the council said that if the information is required to inform a decision regarding the purchase or otherwise of an

individual property, then this information is available and can be obtained by a request under the EIR, as has been advised to the requestor and is publicised on the council's website. The council considers that this addresses the public interest arguments identified in favour of disclosing the information, and there is little or no public interest in disclosure of the bulk information sought.

28. The Commissioner has taken into account the general public interest in transparency and accountability. He is also mindful of the presumption in favour of disclosure and the need to read exceptions restrictively. He has also taken into account the burden and distraction that would be imposed on the council and the wider public interest in protecting the integrity of the EIR and ensuring that they are used responsibly.
29. On balance the Commissioner finds that the public interest favours maintaining the exception as the burden imposed on the council would be significant and, due to the constantly evolving status of the information, any wider value in the request is reduced. The Commissioner's view is that the complainant's request would not fulfil any wider environmental issue.
30. Therefore, in all the circumstances of the case the Commissioner finds that the public interest in maintaining the exception in regulation 12(4)(b) outweighs the public interest in disclosure.

## Right of appeal

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

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

32. 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.
33. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**