

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

**Date:** 5 May 2015

**Public Authority:** City of York Council  
**Address:** West Offices  
Station Rise  
York  
YO1 6GA

**Decision (including any steps ordered)**

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1. The complainant has requested information related to a development plan for Earswick, York. City of York Council refused to comply with the request; citing regulation 12(4)(b) of the EIR because the burden involved in doing so would be 'manifestly unreasonable'.
2. The Commissioner's decision is that City of York Council has correctly applied the exception under regulation 12(4)(b) and that the public interest favours maintaining the exception. He considers it breached regulation 9(1) because it did not ask the complainant to narrow the scope of their request within 20 working days.
3. The Commissioner does not require City of York Council to take any further steps.

**Request and response**

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4. On 14 August 2014, the complainant wrote to City of York Council ('the Council') and requested information in the following terms:

*"... I should like to request the production of the following information under Section 1 of the Freedom of Information Act 2000:-*

**Liaison with developers**

*\* details (including dates) of any officer or member dialogue, written or otherwise, with any agent, developer, housing association or other interested party regarding the proposed removal of 220 acres of green belt land at Earswick, which as part of the Local Plan further sites consultation, is to be re-categorised as 'safeguarded' land for future development*

*\* copies of all correspondence, minutes of meetings, transcripts, correspondence and other documents outlining concerns arising from the Local Plan Further Sites Consultation document and its Appendices discussed/outlined with site promoters and details of how it was proposed that these concerns would be addressed*

*\* copies of relevant minutes of meetings, other documents and correspondence involving conversations or discussions with the Get York Building Board*

*\* copies of all relevant meeting minutes, transcripts, correspondence and/or telephone conversations or discussions involving the HCA, the site sponsor, Leeds LEP and the North Yorkshire LEP, especially in connection with infrastructure works presented for consideration or the availability of funding for the required infrastructure costs*

**Discussions with Thirteen Group/other developers about development on greenbelt land at Earswick since 2010**

*\* copies of all meeting minutes, correspondence, transcripts and/or telephone conversations or discussions with Thirteen Group, Dartstone Properties, Fabrick Housing Group or any other developer about the proposal to 'Safeguard' the Greenbelt in Earswick*

*\* copies of all meeting minutes, correspondence transcripts and/or telephone conversations or discussions with Thirteen Group, Dartstone Properties, Fabrick Housing Group or any other developer about the possibility of building on the Greenbelt in Earswick, during the term of the Local Plan or otherwise*

**Discussions with the owners or their servants or agents of the land in the Earswick greenbelt since 2010**

*\* copies of all meeting minutes, transcripts, correspondence and/or telephone conversations or discussions with any or all of the land owners, their servants or agents of land in the Earswick Greenbelt about the future use of this land"*

5. In response to the Commissioner's decision in case reference FS50555609, the Council provided a response to the complainant on 24 October. It refused to comply with the request and cited regulation 12(4)(b) because the costs involved in doing so would be 'manifestly unreasonable'. It said that an initial search for the requested information held in emails had retrieved 21, 065 items and that to identify specific information within this, relevant to the request, would be a disproportionate burden and cause an unjustified level of disruption to council services.
6. The complainant requested an internal review on 31 October. They were dissatisfied with the search parameters the Council appeared to have used and the fact that the Council seemed to have searched only its email records, and no other filing systems and databases where information may also be held.
7. The Council wrote to the complainant on 3 December. It maintained its original position. It explained why more restrictive search terms would not reduce the number of items retrieved. It said that relying on officers' personal knowledge to locate specific information would also take an excessive amount of time. The Council suggested that the complainant submit a new request for specific information, rather than documents in which that information might be held.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 8 December 2014 to complain about the way their request for information had been handled. They are dissatisfied that the Council used the terms 'Earswick' and 'SF14' (the site reference number) to search for relevant information. They consider that if the Council were to use a more sophisticated combination of search terms it could retrieve fewer items. This would then reduce the amount of time needed to identify information relevant to their request and nullify the Council's application of the exception under 12(4)(b). In addition the complainant considers the Council should also search all its electronic records, not just emails.
9. The complainant drew the Commissioner's attention to a press release that concerned emails about the Earswick site that had apparently not been disclosed in response to a separate FOI request and which were subsequently leaked. The complainant is of the view that the Council has a history of deliberately mishandling FOIA requests regarding the planning proposal in question in order to withhold information it holds.
10. The Commissioner notes that the Council's breach of regulation 5 (time for compliance) in respect of this request has been covered in

FS50555609. He has therefore focussed his investigation on the Council's response to the request: its approach to the search for information relevant to the request, its subsequent application of regulation 12(4)(b) to it, and the advice and assistance it provided to the complainant.

## **Reasons for decision**

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### **Regulation 2 – is the requested information environmental information?**

11. Information is 'environmental information' and must be considered for disclosure under the terms of the EIR rather than the FOIA if it meets the definition set out in regulation 2(1)(a) to 2(1)(f) of the EIR.
12. The Commissioner considers the information in this case can be classed as environmental information, as defined in regulation 2(1)(c) of the EIR. This says that any information on measures such as policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect the elements or factors of the environment listed in regulation 2 will be environmental information. One of the elements listed is land.
13. The request is for information relating to housing development plans for a greenbelt area of York. The Commissioner is therefore satisfied that, as this request is for information concerning the use of land, it falls under the EIR.
14. Regulation 12(2) of the EIR says that a public authority shall apply a presumption in favour of disclosing environmental information.

### **City of York's search for information within the scope of the request**

15. In its initial response to the complainant, the Council explained that it had conducted a search of information held in emails. It used the search terms 'Earswick' and 'SF14'. This search retrieved 21,065 items and that this 'was without searching document filing systems'. The Council said that many of the retrieved items would not be about the greenbelt land that is the complainant's interest but would concern other Earswick issues such as meetings in the area or private planning issues.
16. The complainant responded that the search parameters that the Council used were too wide and consequently returned a large volume of items. In the complainant's view this appeared to have then provided the Council with the excuse that it would take too long and be too costly to identify the specific information requested. The complainant considered

that more appropriate 'key words' would narrow the search considerably and it could be carried out in a matter of seconds.

17. At internal review, the Council sought to justify its approach to the search for information that it undertook, and to explain why using more restrictive search terms would not lead to fewer, more relevant information being retrieved. It said that the complainant's request is very widely drawn. Restrictive search terms such as 'green belt land at Earswick' would not locate information within the scope of the request because documents might omit the word 'land' or refer to the changes in different terms. General search terms would be likely to retrieve information that is not within scope because words like 'Earswick', 'plan', 'local plan' or 'green belt' will retrieve items either about Earswick but not about planning, or about a plan or greenbelt but in a location other than Earswick. An electronic search would indeed be quick, but to read all the retrieved information and separate out that which is relevant to the request would be too time consuming. The Council concluded that automated searches are of limited use and cannot fulfil the complainant's request.
18. The complainant suggested to the Commissioner that the Council could narrow the scope of any electronic search by using combinations of specific search terms such as 'Thirteen Group', 'Earswick' together with 'Get York Building Board'. This would enable the Council to comply with the request within any cost or time limit.
19. The Commissioner put this to the Council. After some delay, the Council provided the Commissioner with its submission. In it, the Council said that it used search terms that it considered were appropriate and relevant. It accepted that a more limited search would be likely to retrieve fewer emails, but that such a search would not be certain to capture all the relevant information that the Council holds. It gave as an example, the following aspect of the request 'details of any officer or member dialogue, written or otherwise, with any agent, developer, housing association or other interested party...'
20. However, the Council told the Commissioner that, in response to his questioning during the investigation, it had undertaken searches using the following combinations of search terms:  
  
Thirteen group, Earswick and SF14  
Fabrick Housing Group, Earswick and SF14  
Dartstone Properties, Earswick and SF14  
Get York Building Board, Earswick and SF14  
Leeds Region Local Enterprise Partnership, Earswick and SF14

The Council told the Commissioner that these searches retrieved no items.

21. The Council also noted in its submission that it had not undertaken a search of other filing systems, that might hold information such as '...minutes of meetings, transcripts, correspondence and other documents outlining concerns arising from the Local Plan Further Sites Consultation document and its Appendices...'. The Commissioner infers that this is because the Council has estimated that a search of only its email records would take so long as to make the request 'manifestly unreasonable'. However, he reminds City of York Council that, under the FOIA, it has a duty to search all of its electronic records when considering what information it may hold.
22. However, the Commissioner noted that the request in a separate case, reference FER0569657, is for similar information regarding the same planning proposal for Earswick. In that case, City of York retrieved and released information to the applicant. The Commissioner asked City of York Council why that was possible in that case, but not in this. Again, after some delay, the Council explained that it considers the request in this particular case is much wider than in FER0569657. This request comprises nine questions and concerns correspondence, minutes and notes relating to five agencies, regarding the greenbelt land at Earswick. In contrast, FER0569657 comprises four questions for similar information. Two of these specifically concern Cabinet Members' response and the remaining two are limited to correspondence with only two other agencies. The Council confirmed that its search of emails containing information relating to the request that is the subject of this notice retrieved 21, 065 items and when more specific searches were carried out, no emails were identified.
23. On the information provided to him, the Commissioner is prepared to accept that the searches the Council undertook to identify information within the scope of the request were appropriate and satisfactory.

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

24. Regulation 12(4)(b) says that a public authority may refuse to disclose environmental information if the request is 'manifestly unreasonable'. 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.
25. Where the exception is engaged it is subject to a public interest test under regulation 12(1)(b) to determine whether the information should be disclosed in spite of the exception applying.

26. A request can be manifestly unreasonable for two reasons: firstly, if it is vexatious and secondly where it would incur unreasonable costs for a public authority or an unreasonable diversion of resources to provide the information. This is not a charge to the requestor, but a consideration of the cost to the authority in searching for and providing the information.
27. In this case the council has said that identifying the relevant information would incur a level of cost, in terms of being a disproportionate diversion of its resources, to the extent that responding to the request would be manifestly unreasonable.
28. The EIR do not provide a definition of what constitutes an unreasonable cost. This is in contrast to section 12 of the FOI Act under which a public authority can refuse to comply with a request if it estimates that the cost of compliance would exceed the 'appropriate limit'. This appropriate limit is defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Regulations) as £600 for central government departments and £450 for all other public authorities, such as City of York Council.
29. The Act allows a public authority to consider the above amount by charging the following activities at a flat rate of £25 per hour of staff time:
  - Determining whether the information is held;
  - Locating the information, or a document which may contain the information;
  - Retrieving the information, or a document which may contain the information; and
  - Extracting the information from a document containing it.
30. Although the Act is not directly analogous to the EIR, in the Commissioner's view it can provide a useful point of reference when public authorities argue that complying with a request would cause a disproportionate diversion and therefore could be refused on the basis of regulation 12(4)(b).
31. A request may therefore exceed the above limit and yet still require a response from the authority. Under the Regulations the circumstances of each individual case will determine whether the request is manifestly unreasonable or not.

### **Is the request manifestly unreasonable?**

32. In its initial response to the complainant, the Council said that to identify information relevant to the request within the 21,065 emails its searches had identified would be a disproportionate burden and cause

an unjustified level of disruption. The cost of complying with the request – in terms of the amount of time it would take officers to identify information – would be too great and therefore the request is manifestly unreasonable. This does not take account of the additional searches that it would need to undertake to identify relevant information held in notes, meeting minutes and so on, referenced in the request.

33. The Council considered it would take two minutes or longer to review each retrieved email and attachment; it says it would not be possible to identify relevant information without manually reviewing each email. With 21,065 emails in scope this would take approximately 700 hours to identify any requested information, equivalent to one officer working full time on the request for 19 weeks. This is far in excess of the 18 hours of staff time that is considered appropriate for a local authority to comply with a request under section 12 of the FOIA (see §28-29). The Council considers the burden of carrying out this work would be disproportionate for the reasons provided at §37-39.
34. The Commissioner agrees that that the burden of complying with the request would be disproportionate and would distract it from delivering other services. He accepts that development on this particular greenbelt land is a significant concern for local residents but he is less convinced that it is of wider public interest. Having considered the searches that the Council undertook and the cost involved – in terms of staff time – in identifying specific information covered by the request, the Commissioner is satisfied that the request is manifestly unreasonable and that the exception under regulation 12(4)(b) is engaged.

### **Public interest test**

35. Regulation 12(4)(b) is a qualified exception which means that it is subject to the public interest test at regulation 12(1)(b). This says that information can only be withheld if, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosure.

#### *Public interest in favour of disclosing the information*

36. The Council accepts that there is a strong public interest in people being aware of its proposed plans, so that they can effectively engage in, and express their views about, democratic procedures. It therefore considers it is in the public interest to provide information about the proposals in question, and all aspects of the proposed Local Plan, including information on the reasons for these proposals, so that people can engage in the process of agreeing the Plan locally.



*Public interest in favour of maintaining the exception*

37. The Council considers that the information that has been requested will contain a large amount of information that will not contribute to the process of enabling people to effectively engage in expressing their views on democratic procedures. The Council told the complainant that that *"much of the information identified will not provide further useful insight or information regarding the proposals for the land, or into the issues in question"*.
38. The Council therefore says that to identify specific information relevant to the request from the broad information retrieved in its search would divert its resources (ie staff) away from being able to engage in consulting with people to agree the Local Plan.
39. Finally, the Council has explained to the Commissioner that a large amount of information regarding the proposals and reasons for them has already been published, including information about the greenbelt at Earswick. This information is at [www.york.gov.uk/localplan](http://www.york.gov.uk/localplan) .

*Balance of the public interest*

40. Information about the proposal is already published and the Commissioner has agreed with the Council's estimation that the cost of complying with the request would be excessive and place an unreasonable diversion of resources on the Council. The Commissioner therefore considers that, on balance, the public interest favours the Council using its time and resources to provide appropriate information to people and to engage with residents to agree this aspect of the Local Plan. He is aware of the EIR's presumption of disclosure but considers that the Council is correct not to comply with the request on this occasion.

**Regulation 9 – advice and assistance**

41. Regulation 9 of the EIR places an obligation on public authorities to provide advice and assistance to an applicant. If an authority decides that a request is too wide, it must ask the applicant for more detail about the request within 20 working days and help the applicant to provide those details.
42. In its response to the complainant, the Council suggested that it might be able to provide him with appropriate information if he were to submit a new request that specified a more limited time period for the emails that may hold the information he wants. Examples it gave included emails over a specific six month period or emails between a limited number of officers. In its internal review, the Council also suggested the

complainant request specific information rather than the documents in which he believes this information can be found.

43. The Commissioner considers that the Council provided the complainant with sufficient and appropriate advice and assistance with regard to his request. It was however offered outside the 20 working days that is a requirement of regulation 9 of the EIR due to the Council's delay in responding to the request initially (covered in FS50555609).
44. The complainant did not submit a new request but maintained his position that the Council should be able to retrieve specific information they requested by carrying out an electronic search of its records.

## Right of appeal

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45. 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)

46. 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.
47. 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**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**