

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

### **Decision notice**

**Date:** 19 October 2015

**Public Authority:** Cambridgeshire County Council

**Address:** Shire Hall  
Cambridge  
CB3 0AP

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

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1. The complainant has requested a copy of a street lighting contract. Cambridgeshire County Council (the council) refused the request under regulation 12(4)(b) as it considered it to be manifestly unreasonable. The Complainant asked the Commissioner to determine whether the council was correct to refuse the request and whether it should have responded under the EIR. The Commissioner's decision is that the information sought falls under the EIR and has determined that regulation 12(4)(b) of the EIR is not engaged in this case.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Issue a new response to the complainant's request without relying on regulation 12(4)(b) of the EIR.
3. The public authority must take these steps within 35 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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4. On 12 January 2015, the complainant requested the following from the council:

*"...Please supply me with a complete and unredacted copy of the contract between Cambridgeshire County Council and Balfour Beatty for the Cambridgeshire Street Lighting PFI project – I accept that a small amount of information may be exempt under provision 40(2) of the Act. By contract I mean all the relevant documents that form part of the contract and, where you hold them or they are known to you, a list of any contracts relating to elements of the main contract that are sub-contracted or that constitute separate contracts relevant to the street lighting PFI contract. If the contract is regionalised, then a response that omitted documents relevant only to a region or regions other than that which includes The Stukeleys Parish would be an acceptable response."*

5. The council contacted the complainant on the 6 February 2015. It advised that it considered the request to be a request for environmental information and so will be responding under the EIR. It also stated that due to the complexity of the information requested, it was relying on regulation 7 of the EIR to extend its response time by a further 20 working days, that being by 10 March 2015.
6. On the 10 March 2015, the council provided its response to the request. It refused the request relying on regulation 12(4)(b) of the EIR as it considered it to be manifestly unreasonable. It advised that it was relying on this exception to refuse the request because of the disproportionate amount of time and burden it would place on the council to consider for which parts of the contract exemptions would be engaged.
7. The complainant requested an internal review on 29 March 2015 as he did not accept the council's reasons for refusing his request.
8. The council provided its internal review response on the 27 April 2015. It maintained its decision.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 17 June 2015 as he is not satisfied with the council refusing his request and he does not consider the request falls under the EIR.
10. The Commissioner considers the scope of the request is to determine firstly whether the request falls under the EIR. Then if so, he will consider if the council are able to rely on regulation 12(4)(b) of the EIR to refuse the request as manifestly unreasonable.

## Reasons for decision

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### Is the requested information environmental?

11. Regulation 2(1) of the EIR defines environmental information, as among others, information on:
  - (a) "The states 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, discharge 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.
12. The information requested is for a copy of a street lighting contract. Street lighting would affect the air and atmosphere in the very fact it emits light into the landscape. The contract for this would be considered as a measure that would affect or be likely to affect these elements or factors.
13. The Commissioner is satisfied that the council was correct to respond to the request under the EIR.

### Regulation 12(4)(b) of the EIR – Manifestly Unreasonable

14. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose environmental information to the extent that the request for information 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 for a public authority to respond to in any other way than applying this exception.
15. In this case, the council considers the request is manifestly unreasonable due to the time and cost of resources necessary to comply with the request. It has argued that the time required to consider which

exemptions would be engaged to the contract would place an unreasonable burden on its resources in terms of expense.

16. Unlike the Freedom of Information Act 2000 (the FOIA), the EIR do not have a provision where request can be refused if the estimated cost of compliance would exceed a particular cost limit. However, the Commissioner considers that if a public authority is able to demonstrate that the time and cost of complying with the request is obviously unreasonable, regulation 12(4)(b) will be engaged. The Commissioner considers the section 12 costs provisions in the FOIA is a useful benchmark, acting in this case as a starting point for the Commissioner's investigations.
17. Section 12 of the FOIA states that a public authority is not obliged to comply with a request for information if it estimates that the cost of complying would exceed the appropriate cost limit. In this case, the cost limit is £450 as set out in section 3(2) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Fees Regulations). This must be calculated at the rate of £25 per hour, effectively giving a time limit of 18 Hours.
18. Although section 12 of the FOIA does not allow for consideration of exemptions when considering the time it would take to respond, regulation 12(4)(b) of the EIR does not have the same parameters. Therefore, in the Commissioner's view, if the council can demonstrate a sufficient unreasonable burden on its resources in terms of time and expense to respond to the request, then 12(4)(b) of the EIR may be engaged.
19. In order to make a determination, the Commissioner has asked the council to explain to him its reasons for refusing the request as manifestly unreasonable.
20. The council has explained to the Commissioner that the request for the contract is not a simple request for a single document with some appendices. It states that is a complex and substantial collection of technical documents. The contract is made up of 116 separate documents and these documents range from two or three pages to two or three hundred pages per document and there are approximately 650 pages over the 116 contract documents.
21. The council has told the Commissioner that the full collection of the 116 separate documents is not held as a single file. Parts are held electronically and parts retained in hard copy and the council states that to bring together all of the final versions of each section of the contract would be a significant task, which would include the retrieval of some records from off-site storage.

22. The council has explained to the Commissioner that the contract will contain information that would be exempt from disclosure. Although schedule 22 within the contract identifies some commercially sensitive information, it is likely that there will be considerably more information, not within schedule 22 of the contract, which still falls within the EIR exceptions, including regulation 13 – personal data of third parties.
23. The council has told the Commissioner that it has strong concerns about potentially exempt information within these documents; notably, information which if disclosed would be likely to have an adverse effect on the legitimate economic interests of the council and other parties to the contract. It also considers that disclosing the information without due consideration will likely see the council breach the Data Protection Act 1998 (the DPA) by unfairly disclosing personal data and put the council at serious risk of legal action from the third parties whose economic interests would be adversely affected if their information was disclosed.
24. The Commissioner notes that the council extended its response time to this request by a further 20 working days under regulation 7, which is a provision available to public authorities when dealing with more voluminous/ complex requests.
25. Also, the Commissioner's guidance<sup>1</sup> on regulation 12(4)(b) at paragraph 10 states:

*"we consider this exception to be concerned with the nature of the request and the impact of dealing with it and not any adverse effect that might arise from disclosure of the content of the information requested."*
26. The council has further advised the Commissioner that although the contract was awarded four years ago, the lifespan of the contract is 25 years, so considers it still to be in the very early stages and so there will still be a considerable amount of information that has the potential to cause harm to the legitimate economic interests of the council as well as to the other third parties.
27. Due to the complexity of the contract combined with the technical documents and many appendices, the council has said that the reader would need to continually cross check and refer back and forth between

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

the information. This complexity would mean that experts from the council's service area, information governance and legal department would need to consider all of the documents to understand the documents, any sensitivities, how these sensitivities interact with the council's obligations under the EIR, and the potential for legal action against it from third parties should it disclose information.

28. The council has estimated that this will take at least a full week of dedicated Information Governance Officer time, firstly to locate and extract each of the final documents, then reading through the entire contract to identify and consider any possible expectations. The process of reading and reviewing the contract will involve at least two further individuals (a service representative who understands the contract and a solicitor) who combined would need to dedicate a week of working time to the task.
29. The council has calculated this as approximately 74 hours of staff time, based on the standard 37 hour work week, before any consultation with third parties is then taken forward. The council has worked this out to be a cost to the council of £1,850, minimum.
30. On this estimate the Commissioner has also considered the fact that this is a large council. The question is, is spending a couple of weeks reviewing a 25 year contract to consider whether there are any exceptions an unreasonable burden on it?
31. The council has further explained that the resources that would need to be taken away from other council work would be considerable. The individuals involved would need specialist skills and knowledge and the council states that devoting them to this single request would mean that other work would not be completed due to a limited pool of internal resources with the skills and knowledge to take on work instead and budget restraints that would prevent the council from employing similarly skilled temporary staff to cover the shortfall.
32. The Commissioner realises that public authorities are under budget restraints and that they need to consider where their resources are best placed but he also sees that that the council would have been aware at the time of the contract being negotiated that it would be subject to the FOIA and/or EIR. The council has advised the Commissioner that "*as is standard practice across the public sector, the 'FOI' references in the contract include a commitment from the Council to consult with them in regard to a request.*" They being: Balfour Beatty as the main provider, Connect Roads Cambridgeshire and the lenders who are party to the contract.

33. The Commissioner on this considers that the council may have been able to limit any burden this request has placed on it by putting steps in place at the time of the contract being created to ensure it knew which parts it may need to withhold in the conceivable event that a request should ever be made for the contract. In addition, this application of record management to such a large and valuable contract would more than likely benefit any review of the arrangements that parties may wish (or be obligated) to undertake. This is likely to be equally true at any such time that renewal might be considered – especially as there are over twenty years left to run. To suggest that the relevant elements are so scattered and inaccessible even now, further suggest that this is unlikely to be any simpler in two decades time when the term ends and a replacement is considered.
34. The cost and terms of the contract would of course generate interest from the public. The council has told the Commissioner that it has responded to other requests about the contract and it considers this would go towards satisfying any public interest. But this request is for the contract in its entirety, not specific just parts about it.
35. With regards to the length of contract being 25 years and it already being 4 years in, the Commissioner sees that possibly, any commercial interests may have lessened compared to when the contract was first being put together. However, the Commissioner accepts that this cannot be determined unless the exemption itself is considered and applied to the information.
36. In a previous request, the council advised that the service from this contract is estimated to cost around £5.7 million in 2013/14 alone and estimated to save around £900,000 in carbon and energy savings every year.
37. Basing this as a yearly estimate, the Commissioner sees that this contract would run at a cost in excess of £100 million for the 25 year period. This is a significant amount of money and so there would be a considerable amount of public interest in this.
38. Paragraph 21 of the Commissioner's guidance for regulation 12(4)(b) states:

*"It should be noted that public authorities may be required to accept a greater burden in providing environmental information than other information."*
39. This was confirmed in a preliminary decision of the Information Tribunal in the case of *Department for Business Enterprise and Regulatory reform (DBERR) vs the Information Commissioner and Platform EA/2008/0097*.

The tribunal considered the relevance of regulation 7(1) – extension of time to respond – 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."*

40. On review of the above, the Commissioner accepts that there would be some burden placed on the council in having to review and consider what exceptions may be engaged before responding to the request.
41. However, he does not see it to be unreasonable that the council may need to take approximately two weeks to consider what, if any parts of a 25 year contract that is worth over £100 million plus of tax payer money. He finds it difficult to accept the council's refusal that the request is manifestly unreasonable, due to the specified time and resources it will take it to consider whether any exemptions or exceptions are engaged, to a contract such as this.
42. Therefore the Commissioner's decision is that regulation 12(4)(b) of the EIR is not engaged and the council needs to issue a new response to the complainant without relying on regulation 12(4)(b) of the EIR to this request.



## Right of appeal

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43. 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)

44. 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.
45. 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**