

Environmental Information Regulations 2004

Decision notice

Date: 27 April 2015

Public Authority: Devon County Council
Address: County Hall
Exeter
EX2 4QD

Decision (including any steps ordered)

1. The complainant has requested recorded information relating to different types of statutory notices issued by Devon County Council, notably under the Highways Act 1980. The Council refused to comply with the complainant's request in reliance of section 12 of the Freedom of Information Act.
2. The Commissioner's decision is that the information sought by the complainant constitutes environmental information and therefore falls to be considered under the EIR. He finds that Devon County Council is entitled to rely on Regulation 12(4)(b) as its grounds for refusing to comply with the request on the basis that it would be manifestly unreasonable to do so.
3. The Commissioner does not require the Council to take any further action in this matter.

Request and response

4. On 14 August 2014, the complainant wrote to Devon County 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"

5. The Council responded to the complainant's request on 27 August. The Council advised the complainant that it was unable to supply the information she had requested by virtue of section 12 of the FOIA – where the cost of complying with the request would exceed the appropriate limit provided by the Freedom of Information and Data Protection (Appropriate Fees) Regulations 2004.
6. The Council also advised the complainant that if she was to specify a geographical area the Council could review this request again and ascertain whether compilation of the statistics would be possible.
7. On 28 August the complainant wrote to the Council to complain about its failure to provide the information she seeks. The complainant disputed the Council's assertion that it would take more than 18 hours for it to comply with her request.
8. On receipt of the complainant's complaint the Council determined to deal with it under stage 1 of its complaints procedure. The Council made its response to the complainant's stage 1 complaint on 24 September.
9. The Council informed the complainant that it operates a number of databases which hold information of the type she seeks. The databases hold many thousands of records and it is not currently possible to extract the information into a central report. The Council therefore upheld its decision to uphold its application of section 12 of the FOIA. Again the Council advised the complainant that she might wish to refine her request.
10. On 25 September the complainant wrote to the Council to complain about the non-provision of the information she had requested. In her complaint, the complainant stated that she "finds it difficult to believe that [the Council's] teams or officers do not keep some kind of records of the cases they are working on upon which they have issued a statutory notice." She asked; "how are they able to monitor whether action has been taken by the person/persons responsible or not? Do they keep handwritten lists; tasks or spreadsheets on their computers, diary entries; all indicating when they should revisit the matter?"
11. The Council made its stage 2 response to the complainant's complaint on 15 October. The Council provided the complainant with further

explanation of how the information is held in its databases but went on to confirm its reliance on section 12 of the FOIA.

Scope of the case

12. The complainant contacted the Commissioner on 16 October 2014 to complain about the way her request for information had been handled.
13. The complainant asked the Commissioner to consider whether the Council has rightly denied access to the information she has asked for.
14. The initial focus of the Commissioner's investigation of this complaint was the Council's application of section 12 of the FOIA.
15. Having considered the nature of the information sought by the complainant, the Commissioner has determined that the Council should have responded to her request under the EIR. The following decision is therefore made in respect of the provisions of the EIR rather than of the FOIA.

Reasons for decision

Is the information 'Environmental Information'?

16. Information is 'environmental information' if it meets the definition set out in Regulation 2 of the EIR. If the information satisfies the definition in Regulation 2 it must be considered for disclosure under the terms of the EIR rather than the FOIA.
17. Under Regulation 2(1)(c) of the EIR, any information on activities which affects or is likely to affect elements or factors of the environment listed in Regulation 2 will be environmental information. The types information specified in this definition include policies and legislation.
18. The Commissioner has considered the nature of the information sought by the complainant. He is satisfied that the information is environmental information as it relates to notices issued by the Council under various provisions of the Highways Act 1980. These notices relate to:
 - Powers given to the Council as to the removal of projections from buildings;
 - Cutting or felling of trees that overhang or are a danger to roads and footpaths;

- Powers relating to the obviation of danger caused by wall near streets; and
- The requirement to make urgent repairs to private streets.

19. In consideration of the above, the Commissioner finds that the request should be dealt with under the EIR.

Regulation 12(4)(b) – where a request is manifestly unreasonable

20. Regulation 12(4)(b) of the EIR allows a public authority to refuse to disclose environmental information to the extent that the request is manifestly unreasonable.

18. There is no definition of 'manifestly unreasonable' under the EIR. The Commissioner considers that 'manifestly' implies that the request should be 'obviously' or 'clearly' unreasonable.

19. The Council has confirmed to the Commissioner that it holds records relating to the kinds of statutory notices falling within the scope of the complainant's request. It has advised the Commissioner that there are more than twenty different types of notice which fall within the scope of the request.

20. Statutory notices can be served on the owners of property in respect of matters including soil being washed onto the highway, hedge cutting, public rights of way and enforcement action relating to bridges and other structures.

21. The Council has also advised the Commissioner that its records of notices are not held in one place or held in a particular format.

22. Some of the notices are managed by members of staff who cover particular areas within the County. Here, the information is held in paper-based format to assist accessibility for the purpose of mobile working. Other members of staff hold records in spreadsheet form.

23. Some of the information is held in databases which can be centrally searched; however searches cannot be made for all the statutory notices which fall with the scope of this request.

24. The Council considers that it has robust processes in place for issuing and enforcing its statutory notices; particularly where the issue involves a possible threat to life or well-being. That said, the Council has advised the Commissioner that it is not required to monitor all forms of notices which fall within the scope of the complainant's request, as they can relate to matters which pose little or no risk to the public – the example given is where a notice relates to a drop kerb.

25. The Council advised the Commissioner that it would take approximately 20 hours to comply with the complainant's request.
26. In order to make this estimate the Council undertook a sampling exercise to determine how long it would take locate and extract the details which the complainant seeks.
27. The exercise involved two of the Council's officers carrying out searches of their paper-based records, spreadsheets and databases held in electronic files. The officers recorded that it took twenty minutes to locate and extract the information required by the complainant.
28. There are 61 officers working across the Council who have responsibility for administering the statutory notices caught by this request and therefore, based on twenty minutes per officer, it would take at least 20 hours to comply with the complainant's request.
29. Unlike the FOIA, the EIR do not have a provision where a request can be refused is the estimated costs of compliance would exceed a particular cost limit. However, the Commissioner considers that the cost provisions of section 12 of the FOIA offer a good benchmark against which to measure whether complying with a request for information would be unreasonable.
30. 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. The cost limit is set out in section 3(2) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations") and is currently set at £450.
31. The £450 limit must be calculated at the rate of £25 per hour. This effectively provides a time limit of 18 work hours. Additionally regulation 4(3) the Fees Regulations only allow for four activities which can be considered in relation to complying with the requests. These activities are:
 - Determining whether the public authority holds the information requested;
 - Locating the information or documents containing the information;
 - Retrieving such information or documents; and
 - Extracting the information from a document or other information source.

32. The cost of redacting relevant but exempt information may not be taken into consideration for the purpose of calculating the appropriate limit.
33. The Commissioner accepts that the Council holds the information which the complainant seeks. He has no reason to doubt the estimate provided by the Council that complying with the request would exceed twenty hours of work and, by virtue of this, the appropriate cost limit. The Commissioner has therefore decided that Regulation 12(4)(b) is engaged by the complainant's request.
34. Reliance on Regulation 12(4)(b) requires the public authority to consider whether, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
35. In this case, because of its reliance on section 12 of the FOIA, rather than the EIR, the Council has not considered the public interest test. The Commissioner has considered the public interest on the Council's behalf.

Public interest factors which favour the disclosure of the requested information

36. The Commissioner considers that some weight must always be given to the general principle of achieving accountability and transparency through the disclosure of information held by public authorities. This assists the public in understanding the basis and how public authorities make their decisions. This in turn fosters trust in public authorities and may allow greater public participation in the decision making process.
37. In this case, disclosure of the requested information would help the public to understand some of the issues considered by the Council in respect of its regulatory and enforcement activities provided by the Highways Act 1980.

Public interest arguments in favour of maintaining the exception

38. The Commissioner considers that the public interest is also served by ensuring that the Council can maximise its resources for the wider benefit of the public. He takes the view that complying with this request could incur an unreasonable expenditure of time and resources and he considers that these would have to be diverted from the Council's other responsibilities.
39. The Commissioner is mindful of the fact that the public authority's ability to comply with requests submitted by other requesters would be

undermined if it had to routinely deal with requests demanding significant resources.

The Commissioner's conclusions

40. The complainant has asserted that the information she has requested is required by the Council to complete Con29r searches,¹ and she posed the question of how the Council gains access to this type of information for that purpose.
41. The Council accepts that some of the notices caught by this request are required for the purposes of completing Con29r searches. Nevertheless it also asserts that there are a large number of notices which fall outside the Con29r process.
42. The Council has advised the Commissioner that its officers are able to retrieve appropriate information for the Con29r process from the information systems already in place.
43. Both the FOIA and the EIR give the public significant rights of access to the recorded information held by public authorities. However, it was not the intention of the legislation that compliance with requests would have a disproportionate and unfair impact on the public authority. Public authorities carry out many other important functions, often with limited resources at their disposal.
44. The Commissioner has no doubt that the complainant's request has a serious purpose and he must surely give weight to the public interest which lies in knowing that the Council monitors compliance with the statutory notices it issues.
45. The Commissioner has seen no evidence to suggest that the Council is not, or is unable to, monitor compliance with its statutory notices, and he is satisfied that where there are regular calls for this type of information it can be appropriately furnished.

¹ A Con29R enquiry covers information such as whether the road is publicly maintained, building control matters, whether the property is identified as being with a conservation area, planning history of the property and other matters.

46. In this case, the problem lies in the broad scope of the complainant's request: This is the sole reason why it has engaged the appropriate costs limit.
47. The Commissioner must acknowledge the cost impact of the requests made to public authorities and give appropriate weight to the public interest in safeguarding public funds. It is for this reason that the Commissioner has decided that the balance of the public interest lies in favour of maintaining this exception.
48. The Commissioner recognises the obligation provided by Regulation 9(1) of the EIR for public authorities to provide advice and assistance to a person making a request. Here, the Commissioner is satisfied that the Council has met this obligation by advising the complainant to refine her request by reference to a specific type of notice and to a specific geographical area. He is confident that the Council will be more likely to provide information of this type in future should the complainant limit the scope of her information request.

Right of appeal

49. 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

50. 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.

51. 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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Wycliffe House
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