

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

Decision notice

Date: 3 March 2016

Public Authority: Caerphilly County Borough Council
Address: Penallta House
Tredomen Park
Ystrad Mynach
Hengoed
CF82 7PG

Decision (including any steps ordered)

1. The complainant requested information about waste deliveries and collections at a particular site. Caerphilly County Borough Council ('the Council') refused to respond to the request in reliance on regulation 12(4)(b) of the EIR, on the grounds that the request was considered to be manifestly unreasonable. The Commissioner's decision is that the Council correctly applied Regulation 12(4)(b). The Commissioner also finds that the Council met its obligations to offer advice and assistance under regulation 9. The Commissioner does not require any steps to be taken.

Request and response

2. On 15 July 2015, the complainant completed an online form on the Council's website period and requested information relating to waste at a particular site covering the period from 1 January 2010 to 15 July 2015. The request was worded as follows:

"I request, under the Environmental information Regulations 2004 and the Freedom of Information Act 2000, copies of all and any documents and information held by Caerphilly County Borough Council ("CCBC") in connection with the arrangements for sending waste and waste sent by CCBC, or collected from CCBC for delivery to, Unit 14 Polo Grounds Industrial Estate, Pontypool, NP4 0TW (the "Site") falling or which might be considered to fall within the scope of the requests below:"

The request then went on to list 27 specific questions/requests relating to the subject matter. The full wording of the request is reproduced at annex A to this decision notice.

3. The Council responded on 7 August 2015 advising that it had considered the request under the EIR. The Council confirmed that it did not hold any recorded information to answer questions 20, 21, 22 and 25 but agreed to answer the points as "normal course of business" questions, which it subsequently did. In relation to the remainder of the requests, the Council stated that it considered regulation 12(4)(b) of the EIR to apply as the requests were considered to be manifestly unreasonable in terms of the amount of time it would take to comply with the requests. The Council also provided advice on how the request might be refined and offered an opportunity for the complainant to view certain documentation in situ in order to extract some of the information requested.
4. The complainant wrote to the Council on 18 August 2015 and requested a review of the original request in its entirety in light of the application of regulation 12(4)(b). He also asked the Council to provide him with an opportunity to inspect records relating to his request.
5. The Council provided the outcome of its internal review on 11 September 2015 and upheld its decision that no recorded information was held in relation to parts 20, 21, 22 and 25 of the request and regulation 12(4)(b) applied to the remaining parts of the request as it was considered to be manifestly unreasonable.

Scope of the case

6. Solicitors acting on behalf of the complainant contacted the Commissioner on 6 November 2015 to complain about the way the request for information had been handled.
7. In their complaint to the Commissioner, the solicitors was pointed out that, following the refusal of the request, the complainant had visited the Council's offices and viewed some information relevant to the request. In addition, the solicitors advised that the complainant had contacted the Council following its refusal of his request and limited the time period covered by the request. The solicitors asked the Commissioner to take these issued into account in his investigation.
8. The Commissioner wrote to the solicitors and confirmed that he considered each request on its own merits. He explained that, if the complainant had refined the original request of 15 July 2015 in any way, for example by limiting the time period or by excluding certain items he

had viewed, any refined request would essentially be a “new” request for the purposes of the FOIA and/or the EIR. It was explained that if the complainant wished the Commissioner to consider the handling of any new, refined request, in accordance with regulation 11 of the EIR, he would need to have exhausted the Council’s internal review procedure in relation to any refined request before submitting a complaint to the Commissioner.

9. As a result of correspondence and a discussion with the solicitors acting on behalf of the complainant, it was agreed that the scope of the Commissioner’s investigation into this complaint would be to determine whether the Council correctly applied regulation 12(4)(b) to the request of 15 July 2015.

Reasons for decision

Background

10. The request in this case relates to waste material which was left on land when a waste management company ceased operations. The complainant in this case is the landowner of the site. The estimated cost of clearing the site is approaching £1 million. The Council advised the Commissioner that the complainant considers that some of the material left on the site originated from the Council and as such the Council should contribute to the costs involving in clearing the site in question.

Regulation 12(4)(b) – manifestly unreasonable requests

11. 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. 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.
12. 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 being engaged.
13. 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.

14. 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.
15. The EIR do not provide a definition of what constitutes an unreasonable cost. This is in contrast to section 12 of the FOIA 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 the Council.
16. The FOIA 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.
17. Although the FOIA 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).
18. 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 this request manifestly unreasonable?

19. The Commissioner made enquiries to the Council in respect of its application of this exception.
20. The Council provided the Commissioner with a detailed table indicating the type of records held relevant to the request, the processes required to locate and extract the information requested and the associated estimated timescales to carry out the tasks involved. The Commissioner has summarised the Council's representations in the table below:

21. Although the dates cited in the request were 1 January 2010 to 15 July 2015 the Council explained that it did not have any dealings or arrangements with the site referred to in the request until October 2013. In light of this, the Council's estimate for complying with the request only covers the time taken to search records dating back to October 2013.
22. The Council advised that information relevant to questions 1 to 4 and 26 is held within Waste Transfer Notes (WTNs). The WTNs form the largest proportion of records that would need to be reviewed in order to locate and extract information relevant to the request and the Council's estimate for complying with the request reflects this. Based on the amount of time it estimated to review the WTNs, the Council determined that compliance with the request would be manifestly unreasonable.
23. The Council advised the Commissioner that it holds a total of 810 WTNs for the period in question (October 2013 to July 2015). The WTNs relate to waste transferred by the Council to a number of different sites/contractors, including information relating to Thorncraft, the contractor on the site at Pontypool referred to in the request.
24. Questions 1 to 4 of the request relate to specifically to Thorncraft and question 26 is for similar information but relates to all other suppliers/waste sites. The Council explained that the WTNs are filed in date order rather than by site and as such, it would first be necessary to identify the WTNs for Thorncraft from WTNs for other sites. The Council estimate that it would take 5 seconds to review each WTN, and therefore 67.5 minutes (810 x 5 seconds) to identify WTNs relating to Thorncraft.
25. The Council advised that approximately one third of the WTNs relate to Thorncraft (approximately 270) and 540 to other sites. In order to locate and extract information on haulage contractors used and date used (questions 1 to 3) and the dates and quantities of all deliveries to the site (question 4), the Council estimates that it would take 2 minutes for each WTN. Therefore, the Council estimates that it would take 540 minutes to locate and extract information relevant to questions 1 to 4 of the request (270 WTNs x 2 minutes). Question 26 of the request is for similar information as that detailed in question 1 to 4 but relate to waste the Council has sent to other sites. As such the Council also estimates that it will take 2 minutes for each of these 540 WTNs to be reviewed and therefore a total estimate of 1080 minutes to locate and extract information relating to question 26 (540 WTNs x 2 minutes).
26. In light of the above, the Council's estimate for complaint with questions 1 – 4 and 26 of the request is 28 hours as detailed below:

Sort 810 WTNs into Thorncraft and others	67.5 minutes
Review 270 WTNs relating to Thorncraft (questions 1-4)	540 minutes
Review 540 WTNs relating to other sites (question 26)	1080 minutes
Total	1687.5 minutes 28 hours

27. As stated above, the Council provided the Commissioner with an estimate for complying with all parts of the request. It would not be practical for the Commissioner to record in this notice details of the estimates for compliance with each part of the request, but he has summarised three of the main estimates below, which together with the 28 hours referred to above, comprise around 42 hours in total:

Question 6 – estimate 2.66 hours

Review e-tender file on Thorncroft Steel and Thorncroft recycling - a combination of printing and screen shots - 40 minutes per file.	80 minutes
Review relevant staff emails – approx. 10 per person = 40 X 2 minutes	80 minutes
Total	160 minutes

Question 15 – estimate 9.6 hours

Review emails of 9 officers – 324 emails. Estimate based on actual searches which the Council has undertaken in relation to a refined request from the complainant	384 minutes
Review hard copy file for Full Moon Depot	10 minutes
Review MS Diary entries 365 entries x 30 seconds per entry	182.5 minutes

Question 24 – estimate 2 hours

Review end waste returns. One return received from each contractor per quarter 24 returns to review @ 5 minutes each 24 X 5 minutes	
Total	120 minutes

28. The Council's total estimate for complying with the request has been calculated at 43.3 hours. The Council explained that the estimate does not take into account any time which would need to be spent reviewing the information held, once located, to determine whether any exception(s) applied. The Council advised that it did not undertake any specific sampling exercise as it was confident that the time it would take

to locate the information would be considerable. However, the Council confirmed that the estimates were calculated by staff familiar with the documentation associated with the request, and the estimate was reviewed for reasonableness by its Information Governance Unit before assessing whether the request was manifestly unreasonable.

29. The Council confirmed that it considered whether searches could be undertaken "concurrently" for some of the requests and its estimate reflects this. For example, searches for information relevant to questions 8 – 10 were included in the estimate for the time to search for information to answer questions 5 to 7.
30. The Council explained that, because locating and extracting information contained within the WTNs was estimated to take the most time, an offer was made to the complainant to view the WTNs in situ at Council's offices. The Council confirmed that the complainant has made a number of visits to Council offices to view documentation relevant to his request. In addition, the Council has continued to actively engage with him since the refusal of his request. This includes meeting with him to discuss matters relating to his request and handling refined requests received from the complainant.
31. The Council advised that staff would have had to be diverted from their core duties by spending 43 hours handling an information request. The Council pointed out that in today's climate of austerity staff numbers are decreasing and staff are expected to take on the work of posts which have been made redundant. There is very little, if any, spare capacity within the Council.
32. In light of the fact that the request includes internal correspondence and contract documentation, the Council advised that the teams involved in handling this request include the following:
 - Waste Management – 4 employees (including the Head of Service, Strategic Manager, Waste Supervisor and financial admin support).
 - Procurement – 1 employee
 - Chief Executive – 1 employee
 - Members – 2 Members.
33. The Council advised that the 27 questions in the request would primarily require the attention of the Waste Management Supervisor who managed the contract in question, along with the financial administrator working in the team. The Waste Management team is under pressure to manage increasing volumes of municipal waste efficiently in compliance with European rules, and provide regular performance data to the Welsh Government to satisfy them that the Council is complying with the

relevant legislation. The Waste Management Supervisor is responsible for managing contracts and staffing for all recycling and refuse as well as two civic amenity sites.

34. The Council advised the Commissioner that a member of staff left the Waste Management team in April 2015 and was not replaced due to ongoing budget cuts. The Waste Management Supervisor has taken on the duties and responsibilities of the vacant post. The time estimate for dealing with this particular request was very great (43 hours), and it would not have been possible to divert staff for this amount of time, without it having a significant impact on core duties. As a result, the Council determined that the request was manifestly unreasonable and offered the complainant opportunities to refine the request and visit its offices to view documentation in order that he could extract the information to which he was seeking access.
35. The Council advised the Commissioner that it has been involved in significant exchanges of correspondence with the complainant, both prior to and subsequent to this request. The Council confirmed it has been actively working with the complainant in order to provide him with information of use to him. The Council re-iterated that it has met with the complainant, he has visited its offices twice to view information relevant to the request including WTNs and invoices, and it has dealt with refined requests received from the complainant.
36. In terms of the nature of the request and any wider value in the requested information being made publicly available, the Council advised that the request in this case relates to waste material that was left on land when a waste management company ceased operations. The complainant in this case is the landowner of the site who cleared the site in question at his own cost and therefore he has a personal interest in the subject matter. Whilst the Council acknowledges that there is a public interest in ensuring that waste is managed correctly, it considers that there is little wider public value in the detailed information in this case being made publically available.
37. The Commissioner has no reason to doubt the estimate provided by the Council that complying with the request would exceed 43 hours of work. The Commissioner agrees that that the burden of complying with the request would be disproportionate and would distract it from delivering other services. Having considered the financial cost that would be required to comply with the request, in addition to the limited resources of the public authority and the broadness of the request itself, the Commissioner has concluded that compliance with the request would be manifestly unreasonable on the grounds of cost, and that the Council was therefore correct to engage regulation 12(4)(b).

Public interest test

38. 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

39. The Council acknowledges that there are strong public interest arguments in favour of disclosure of the information requested in terms of:

- promoting transparency and accountability,
- greater public awareness and understanding of environmental matters,
- a free exchange of views, and
- more effective public participation in environmental matters

40. Solicitors acting on behalf of the complainant contend that there is a significant public interest in obtaining clearance of the site in question. Disclosure of the information requested would clarify a number of issues as it would allow "access to this environmental information (including policy issues related to the Council's actions and also possible continued Council ownership of part of this waste)".

Public interest arguments in favour of maintaining the exception

41. The Council argues that there are strong public interest arguments in favour of maintaining the exception in order that it is able to carry out its core functions without the disruption that would be caused if it were to comply with the request. Compliance with a request that places such excessive demands on resources would adversely affect the services the Council provides to local tax payers and residents of the borough.

42. The Council advised that it works closely with regulators such as Natural Resources Wales who were involved in this particular case and with Torfaen County Borough Council Environmental Health who oversee the geographical area that the business in question was located in. The Council considers that this demonstrates that it has taken the matter seriously.

43. Having regard to the time it would take to comply with request, along with the resulting adverse effect on the Council's ability to deliver core

services, the Council is of the view that the public interest lies in favour of maintaining the exception. The Council advised that no specific weighting exercise was undertaken. However, in acknowledging the general public interest in transparency and accountability, the Council contends that it offered appropriate advice and assistance. Alternative options were offered to the complainant to obtain the information requested; including visiting Council offices to review records, meeting with the complainant and helping him refocus and refine the request.

Balance of the public interest test

44. The Commissioner appreciates the complainant's personal interest in the requested information in light of the fact that he owns the land on which the waste was left. However he has had to balance this against the burden that would be placed on the Council if it was to comply with the request. The Commissioner also accepts that there is a general public interest in ensuring that waste is managed appropriately.
45. The Commissioner recognises the importance of accountability and transparency in decision-making by public authorities. He further recognises that there is an express presumption of disclosure within the EIR and that public authorities should aim to provide requested environmental information where possible and practicable. The Commissioner further recognises that a public authority will always be expected to bear some costs when complying with a request. For the sake of the public interest test, however, the key issue is whether in all the circumstances this cost is disproportionate to the importance of the requested information. In the Commissioner's view, in this case, it is.
46. The Commissioner considers there is a strong public interest in the Council being able to carry out its core functions without the disruption caused by complying with requests that would impose a significant burden in terms of both time and resource, particular in the current climate where human and financial resources are scarce. The Commissioner is of the view that there is a very strong public interest in public authorities being able to carry out their wider obligations fully and effectively, so that the needs of the individuals they serve are met. The Commissioner is also mindful of the fact that the Council's ability to comply with other requests for information would be undermined if it had to routinely deal with requests requiring significant resources.
47. Taking into account all the circumstances of this case, the Commissioner considers that it would be unreasonable to expect the Council to comply with the request because of the substantial demands it would place on its resources and the likelihood that it would significantly distract officials from their key responsibilities within the organisation. Therefore, in all the circumstances, the Commissioner has found that

the weight of the public interest arguments favours maintaining the exception.

Regulation 9 - advice and assistance

48. 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 broad, it must ask the applicant for more detail about the request within 20 working days and help the applicant to provide those details.
49. In its initial response to the complainant, the Council suggested that many of the questions could be answered by consulting approximately 800 WTNs. It explained that whilst it would take an excessive amount of time for staff to locate, retrieve and extract the information requested, it could make the WTNs available for the complainant to review in situ. The Council also provided advice on how the complainant could refocus other parts of the request, for example, by clarifying the date range in relation to question 23. The Commissioner notes that the complainant has inspected information relevant to his request at Council offices on two occasions. He also understands that the Council has met with the complainant to discuss the information he was interested in and it has also considered subsequent refined requests submitted by the complainant.
50. Based on the above the Commissioner is satisfied that the Council provided the complainant with sufficient and appropriate advice and assistance with regard to his request within the relevant. The Council has therefore complied with regulation 9 of the EIR.

Right of appeal

51. 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

52. 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.
53. 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

Anne Jones
Assistant Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF