

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 19 July 2017

Public Authority: Fenland District Council

Address: Fenland Hall
County Hall
March
Cambridgeshire
PE15 8NQ

Decision (including any steps ordered)

1. The complainant has requested information about an annual waste collection charge from Fenland District Council ("the Council"). The Council refused to comply with the request under regulation 12(4)(b) of the Environmental Information Regulations ("the EIR").
2. The Commissioner's decision is that the Council has correctly applied regulation 12(4)(b), and has complied with the requirement of regulation 9(1) to provide advice and assistance. However the Council failed to provide its refusal notice within 20 working days following the date of receipt of the request, and therefore breached regulation 14(2).
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 31 July 2016, the complainant wrote to the Council and requested information in the following terms:

I am writing to make a FOI request regarding the proposed charge of £40 for waste bin collections, I would like to request the following information in relation to the Garden Bin Waste Proposal:

- 1. Research, emails, studies, communiques and reports - including viability, the impact on fly tipping, research regarding neighbouring councils and cost calculations.*
- 2. The precepted amount for waste collection for the past 5 years (including how much Green waste has cost specifically - if possible).*
- 3. Any records regarding the refund of the £40 fee.*
- 4. Any records regarding food waste.*
5. The Council responded on 16 August 2016. It refused part 1 and part 4 under section 12 of the Freedom of Information Act 2000 ("the FOIA"); advised where the information sought by part 2 could be found in the public domain; and sought clarification about what information was sought for part 3.
6. The complainant requested an internal review on 18 August 2016. This was in respect of the Council's refusal of parts 1 and 4 only.
7. On 20 September 2016 the Council provided advice and assistance about how parts 1 and 4 might be refined to within the cost of compliance.
8. The complainant responded on 24 September 2016 and provided the following refinement:

The time period is 24 months (although given that this is related to a single issue there would already be a limit on the extent and time of the documentation), any records would seem obvious - electronic records such as emails, reports, paper documents, and electronic documents. Finally as this is again for a single issue it would refer to records held within the district.
9. Following an internal review the Council wrote to the complainant on 27 October 2016. It stated that it had reconsidered parts 1 and 4 (as refined) and now identified that the information would be environmental in nature. It then applied the exception provided by regulation 12(4)(e).

Scope of the case

10. The complainant contacted the Commissioner on 20 November 2016 to complain about the way his request for information had been handled, and specifically about the Council's refusal of parts 1 and 4 of the request.
11. The Council subsequently informed the Commissioner that it wished to withdraw reliance on regulation 12(4)(e) and apply the exception provided for manifestly unreasonable requests by regulation 12(4)(b).
12. The Commissioner therefore considers the scope of this case to be the determination of whether regulation 12(4)(b) has been correctly applied to parts 1 and 4 of the request.

Reasons for decision

Is the information environmental?

13. Information is "environmental" if it meets the definition set out in regulation 2 of the EIR. Environmental information must be considered for disclosure under the terms of the EIR rather than the FOIA. Under regulation 2(1)(c), any information on measures affecting or likely to affect factors of the environment listed in regulation 2(1)(b) will be environmental information. The information requested relates to waste collection, which can be understood to affect factors such as waste. The Commissioner therefore considers that the request should be dealt with under the EIR.

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

14. Regulation 12(4)(b) provides:

For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that-

(b) the request for information is manifestly unreasonable...

15. The Commissioner has issued public guidance¹ on the application of regulation 12(4)(b). This guidance contains the Commissioner's definition of the regulation, which is taken to apply in circumstances where either the request is 1) vexatious, or 2) where the cost of

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

compliance with the request would be too great. In this case the Council considers that circumstance 2) is applicable.

16. The EIR does not contain a limit at which the cost of compliance with a request is considered to be too great. However, the Commissioner's guidance suggests that public authorities may use The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004² ("the Regulations") as an indication of what Parliament considers to be a reasonable charge for staff time. The Regulations specify that £450 is the appropriate limit for local government authorities, and that the cost of complying with a request should be calculated at £25 per hour; this applies a time limit of 18 hours.
17. For the purposes of the EIR, a public authority may use this hourly charge in determining the cost of compliance. However, the public authority is then expected to consider the proportionality of the cost against the public value of the request before concluding whether the request is manifestly unreasonable.

Is the exception engaged?

The Council's position

18. The Council has informed the Commissioner that an initial assessment of held information indicates that over 16,000 electronic documents are held, consisting of emails, documents and spreadsheets. This does not include GIS records that relate to route planning and logistics. The Council has in particular stressed that the volume of and breadth of records held (including 14,000 responses to a public consultation) would impose significant burden on the Council to evaluate, and would possibly take an estimated 3-4 weeks of officer time to process.

The Commissioner's conclusion

19. The Commissioner has considered the Council's submissions and recognises that a significant volume of recorded information is held that would fall within the parameters of the complainant's refined request. It is therefore reasonable for the Commissioner to consider that compliance with the request, including the application of any relevant exceptions, would consume significant public resources and place a substantial burden on the Council.

² <http://www.legislation.gov.uk/ukxi/2004/3244/contents/made>

20. On this basis the Commissioner accepts that the request is manifestly unreasonable within the meaning of regulation 12(4)(b).

The public interest test

21. Regulation 12(4)(b) is subject to the public interest test set out in regulation 12(1)(b). This specifies that a public authority may only rely on an exception if, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosure.

Public interest arguments for maintaining the exception

22. The Council considers that the public interest in the subject matter of the request (i.e. the Council's decision to apply a charge to garden waste collection) has been addressed through a transparent process of decision making. This has included a public consultation on the proposed charge which resulted in 14,000 responses to the Council (and which resulted in the online publication of 'Frequently asked questions'), the publication of the consultation report, the publication of 'Overview and Scrutiny Panel' reports, and the publication of the final decision paper to Cabinet. In particular, the Council has referred the Commissioner to the public consultation that was undertaken, of which more than 60% of responses supported the application of a charge.
23. The Council considers that the published reports provide an appropriate level of transparency about the research undertaken and the basis of the decision reached. As such, the Council does not consider there to be additional public advantage in preparing the withheld information for disclosure.

Public interest arguments for disclosure

24. The Council accepts that the act of charging for garden waste collection is a matter that will attract public concern.
25. The complainant has informed the Commissioner that that the charge will have a widespread and significant impact on the public, and argues that affected residents have a right to know how the final charge amount was calculated by the Council. The disclosure of further information may allow greater public understanding the Council's decision making process and allay any suspicion that facts had been manipulated.

Balance of the public interest test

26. The Commissioner recognises the inherent importance of accountability and transparency in decision-making within public authorities, and the

necessity of a public authority bearing some costs when complying with a request for information. However, in considering the public interest test for this matter, the Commissioner must assess whether the cost of compliance is disproportionate to the value of the request.

27. The Commissioner has noted the subject matter of the request, and recognises that the Council's decision to apply an annual charge to garden waste collection may impact on a significant proportion of local residents. As such it is reasonable to conclude that there will be some public opposition to this decision, and that the further disclosure of relevant information may increase public understanding of the Council's decision making process.
28. However, the Commissioner recognises that parts 1 and 4 of the request seek the disclosure of all recorded information connected to the subject matter, with no distinction of its relevance to the Council's decision. The large volume of records held would clearly require significant public resources to be applied in fully complying with parts 1 and 4. Whilst the Commissioner has noted the complainant's public interest arguments, the evidence available to the Commissioner suggests that a formal and transparent decision making process has been followed by the Council, with the relevant reports being published as part of this. As such, there is no clear evidence available to the Commissioner that indicates that the decision making process has been inappropriate.
29. Having considered the relevant factors in this matter, the Commissioner has concluded that the public interest favours the maintenance of the exception.

Regulation 9 – Advice and assistance

30. Regulation 9(1) provides that:

A public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.

31. This regulation places a duty on a public authority to provide advice and assistance to someone making a request. The Commissioner considers that this includes assisting an applicant to refine a request if it is deemed that answering a request would otherwise incur an unreasonable cost.
32. The Commissioner recognises that the Council invited the complainant to refine parts 1 and 4 by limiting them to a time period, type of record, or area within the district. The complainant subsequently refined the request to all records held for the district within the past 24 months.

33. The Commissioner recognises that compliance with parts 1 and 4 is likely to be challenging due to the apparent volume of responses received to the district-wide public consultation. As such, the Commissioner considers that the Council's invitation to limit the scope of parts 1 and 4 by date, type of record, or area to be a proportionate attempt to provide advice and assistance. On this basis the Commissioner considers that the Council has complied with regulation 9(1).

Regulation 14(2) – Refusal to disclose information

34. Regulation 14(2) specifies that a refusal notice must be provided no later than 20 working days after the date on which the request was received.
35. In the circumstances of this case the Council only applied the exception provided by regulation 12(4)(b) during the Commissioner's investigation. The Commissioner must therefore find a breach of regulation 14(2).

Right of appeal

36. 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

37. 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.
38. 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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