Freedom of Information Act 2000 (FOIA)

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 22 June 2017

Public Authority: Trafford Borough Council
Address: Trafford Town Hall
Talbot Road
Stretford
M32 0TH

Decision (including any steps ordered)

1. The complainant has requested information with regards to three areas of land. Trafford Borough Council (the council) initially responded that no information was held for the majority of the request and provided a link to information for the remaining part of it.

2. Following an internal review, the council located some further information but stopped its searches when it realised that it would be too costly to continue to search any further and relied on regulation 12(4)(b) of the EIR – manifestly unreasonable – to do so. The complainant considers that the council should carry out a full search for all the information it holds.

3. The Commissioner's decision is that regulation 12(4)(b) of the EIR is engaged to the request and so the council does not need to carry out any further searches for this request. She also found that the council provided reasonable advice and assistance as per regulation 9 of the EIR.

4. The Commissioner does not require the council to take any steps and it would be for the complainant to refine his request to the council accordingly, should he wish to pursue the further information the council located following its internal review.

Request and response

5. On 1 October 2016, the complainant requested the following information from the council about three areas of land from 2008 to present day on Thorley Lane, Timperley:

> *"1. Land under Land Registry Title GM668617 - Land on the South East side of Thorley Lane, Timperley*
>
> *2. Land under Land Registry Title GM76588 - Land on the South East side of Thorley Lane, Timperley*
>
> *3. Lawn Turf Warehouse, (or any other business entity trading from) 123 Thorley Lane, Timperley WA15 7AL*
>
> *1) Details of all Planning Applications, including change of use.*
>
> *2) Details of any Enforcement notices served.*
>
> *3) Details of all actions taken by the Council as a result of the service of enforcement notices.*
>
> *4) Details of any letters of complaint issued by neighbours relating to change of use / contamination.*
>
> *5) Details of actions taken in respect of the neighbour complaints issued.*
>
> *6) Any reports in existence, from, but not limited to, the HSE in relation to Asbestos contamination.*
>
> *7) Any actions taken by Trafford Council in response to Asbestos contamination.*
>
> *8) Any documents relating to provenance that the THREE listed properties sit within a Green Belt.*

6. The council responded on the 24 October 2016. It advised that for parts 2 to 7 of the request that either no information was held or no action was taken. For parts 2 and 3 it did provide some details of information it held prior to 2008 (outside the scope of the request).

7. For parts 1 and 8, it refused these under section 25 of the FOIA as it was available on the council's website and it provided the links to it. It would appear to the Commissioner that the council was actually relying on section 21 of the FOIA as section 21 is the exemption in relation to information already accessible by other means.

8. The complainant requested an internal review on the 26 October 2016 stating that he was not satisfied with the council's response to the request, particularly for parts 4, 5 and 6 of the request. The complainant advised that he was personally aware that the council had received numerous letters from local residents over several suspicious business related activities on the Green Belt land in question and provided an example list.

9. Lastly, the complainant recommended that the council consult a named Enforcement Officer who the complainant said he knew had a personal involvement and has corresponded with neighbours regarding this issue.

10. The council carried out its internal review on the 23 November 2016. Its response was carried out under the EIR and the council stated that, following the review, it has identified a number of documents relating to the request but refused to search any further relying on regulation 12(4)(b) of the EIR as it considered it would be manifestly unreasonable to search further due to the time it has taken so far.

11. On top of this, the council maintained its response to parts 1 and 8 of the request – information already available on its website.

12. For parts 2 and 3 of the request, the council maintained that no information is held for the date specified in the request (from 2008 onwards).

13. With regards to the further documents identified to parts 4 and 5 of the request, the council refused to disclose them relying on regulation 12(5)(f) of the EIR – interests of the person who provided the information to the public authority – and regulation 12(3) of the EIR – third party personal data.

14. Lastly, for parts 6 and 7 of the request, the council advised that from the further documents identified, none of the information is in relation to these parts of the request.

Scope of the case

15. The complainant contacted the Commissioner on the 11 November 2016 as he is not satisfied with its refusal.

16. The Commissioner asked the complainant whether he was willing to refine his request to the further information now located by the council following its internal review.

17. The complainant has told the Commissioner he wants the council to respond to his original request in its entirety by carrying out all searches.

18. As the council considers it would be manifestly unreasonable to carry out a full search in relation to the request, the Commissioner considers the scope of the case would therefore be to determine whether the council can rely on regulation 12(4)(b) of the EIR.

Reasons for decision

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

19. 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.

20. In this case, the council considers the request is manifestly unreasonable due to the time and cost of resources necessary to carry out all searches in order to fully comply with the request.

21. Unlike the FOIA, the EIR does not have a provision where requests 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 cost provisions in the FOIA is a useful benchmark, acting in this case as a starting point for the Commissioner's investigations.

22. 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[1]) as £600 for central

[1] http://www.legislation.gov.uk/uksi/2004/3244/pdfs/uksi_20043244_en.pdf

government departments is £600 and £450 for all other public authorities.

23. The Regulations allow a public authority to charge 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.

24. Section 12 of the FOIA states that a public authority 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.

25. 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 regulation 12(4)(b) of the EIR may be engaged.

26. In order to make a determination, the Commissioner has asked the council to explain to her its reasons for refusing the request as manifestly unreasonable.

27. The council has explained to the Commissioner that the searches it has carried out so far to locate the information it has, consisted of the following:

    - A Team Manager conducted searches of an email archive of a relevant staff member no longer with the authority for potential information held and caught by the request which took approximately 2 hours.
    - A Team Manager searched their own email history for evidence of links to any potential information held and caught by the request which took 45 minutes.
    - A Team Manager undertook a physical search of their case files to locate any held information which took 1 hour.
    - An Enforcement officer searched their own email history to locate relevant information held which took 3 hours.

- Physical searches of records held on-site which took 2 hours.
- The information found by the Enforcement Officer was reviewed by the Team Manager, which took 1 hour.
- A physical and electronic search of the Land Registry within the Planning records system took 2 hours
- The Team Manager and Enforcement Officer conducted an off-site search of its archived records at Sale Waterside – which took 4 hours between the two of them (so 8 hours of officer time) to carry out physical searches of approximately 20 shelves of records. Averaging 20-25 minutes per shelf to go through and examine the boxes of files.
- The collation and presentation of the potentially relevant information identified from the above searches to its Information Governance Team took 2 hours

28. These searches undertaken so far have taken the council 21.75 hours.

29. The council has advised the Commissioner that searching to see if any further information relevant to the scope of the request it is likely to take a further 8 hours of officer time.

30. This is based on examining a further 30 file boxes of information stored off-site, estimated to take 4 hours. And to complete its electronic searches for any further potential information, the council has advised the Commissioner that the electronic folders and sub folders are not referenced in a way that is ideal for quickly extracting relevant information. Therefore a key word search would be required and based on the electronic searches carried out so far, the council estimate this would take a further 4 hours of officer time.

31. The council estimates that there would be a further 2 hours of redaction time required for any further information that may be located.

32. This would bring the total estimated search time to 31.75 hours of officer time at a cost of approximately £793.75.

33. The Commissioner's guidance[2] for section 12 of the FOIA states at paragraph 21:

> *"A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate."*

34. The Commissioner considers this to be the same when assessing regulation 12(4)(b) of the EIR in relation to costs.

35. The council has told the Commissioner that the searches undertaken so far and further potential searches are based on the quickest possible method of gathering any held information. It has also explained to the complainant in its internal review that the further searches may not reveal any further information as the information located so far are the most likely places any information would be held. However the complainant wants all searches to be carried out.

36. In addition to this request, the council has told the Commissioner that it received a further 4 requests from the complainant between September 2016 and October 2016. Receiving five requests within the space of one month has added to the overall impact on the council's resources to respond and carry out its other duties.

37. The council has stated that two of these requests received were essentially for the same information but the complainant had submitted them to two different departments on the same day. Even though the two requests were for similar information this resulted in two different departments dealing with the initial request creating an unnecessary impact on its resources.

38. The Commissioner accepts that there would be a detrimental impact placed on the resources of a public authority who receives several information requests within a short period of time. In this case, five within one month on a broadly similar topic.

39. The Commissioner notes the complainant's frustrations with the council's response to his 1 October 2016 request, in that it only managed to

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[2] https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

locate further information once he provided reasons as to why he considered the council held more information than that initially provided.

40. The complainant also considers that the searches carried out which located information outside the scope of his request should not be taken in to account as part of the council's calculations for time taken dealing with the request.

41. On review of this, it appears to the Commissioner that the council did provide information outside the specified dates identified in the request, but appears the council provided this further information due to no information being located for the specified dates and its seems to have been provided by the council to demonstrate what it did hold – albeit outside the specified dates.

42. If searches were carried out for the requested information but the search results only revealed information outside the scope of the request, and this information was relayed to the complainant, then the Commissioner is not of the view that the council must subtract its search time that revealed this information. The same would be so if searches were carried out and no information was found at all.

43. On review of the above, the Commissioner is satisfied with the council's explanations and estimations of the search times provided, and using the appropriate limit under FOIA of 18 hours as a guide, she finds agrees that almost 30 hours of work would constitute disproportionate effort. She also accepts that receiving 5 requests within one month would add to any disproportionate burden on its resources in having to provide several responses on similar topics in a short period of time.

44. Therefore for the council to carry out these further searches, which it has explained may not even retrieve any more information than that already found, the Commissioner has determined in this case, that the amount of time required to continue searching for any more information would be a disproportionate use of the council's resources and she therefore finds regulation 12(4)(b) is engaged to this request.

The public interest test

45. Regulation 12(4)(b) is a qualified exemption and is therefore subject to the public interest test at regulation 12(1)(b) of the EIR which states that information can only be withheld if in all circumstance of the case, the public interest test in maintaining the exception outweighs the public interest in disclosure.

Public interest arguments in favour of disclosure

46. The complainant has provided correspondence to the Commissioner to show that local residents have been contacting and corresponding with the council on the overarching issue.

47. The complainant and other residents have concerns over the neglect of the land in question which he has told the Commissioner lies within a section of greenbelt and that the current owners have attempted to get its status changed to brownfield status which may help with a planning application.

48. The council has stated to the Commissioner that it recognises the presumption in favour of disclosing information under the EIR.

49. Providing information can allow individuals to better understand decisions made which affect their live and gives an opportunity to challenge these decisions.

50. This contributes to a more informed public understanding and participation in a debate and enables more scrutiny of actions of public officials.

Public interest maintaining the exemption

51. The council considers that to fully comply with this request would be an excessive cost to the authority in terms of staff time to deal with this request, severely reducing its capacity within the planning enforcement department, due to manual searches for the information being required, to carry out its other day to day functions.

52. It is also of the opinion that allowing similar time intensive searches to be carried out would set a precedent for any future similar requests further impacting on the council's services.

53. The council has explained to the Commissioner that the searches it has carried out so far are the most likely places to have retrieved any information held. The remaining searches to ensure all information has been located may provide further information but it considers it disproportionate to the amount of work and staff time required to determine this, as well as consider any further exemptions, distracting its staff from its other duties to the council's detriment.

54. The council is therefore of the view that, in this case, there is a stronger public interest in the council being able to carry out its core functions without excessive disruption caused by complying with significantly burdensome requests, enabling it to give priority to its wider obligations to deliver services fully and effectively.

Conclusion

55. The Commissioner accepts that there is a strong interest in disclosure of environmental information in general as it promotes transparency and accountability for the decisions taken by public authorities relating to environmental matters and public expenditure.

56. She notes that the complainant was not happy with the council's initial response and that the council only found further information once challenged in the internal review, and this has caused the complainant to have some distrust in the council, making him question the actions it has taken and continues to take in this overall issue.

57. The Commissioner recognises that this is the point of an internal review; to allow a public authority another opportunity to review its stance following any challenge to an initial response. She understands that carrying out the internal review may not necessarily alleviate the concerns an individual may have and that carrying out a full search could rebuild some trust.

58. The Commissioner has seen correspondence from other members of the public, provided by the complainant, in relation to this issue – which demonstrates there is a public interest in the requested information and the issue as a whole and that this is an on-going concern to residents However, she needs to balance this against any disproportionate or unjustified disruption caused to the council in having to respond to the request.

59. In this case, the Commissioner has considered the time that it would take the council to fully comply with the request, 31.75 hours at a cost of £744After taking in to account the council's determination that it has searched the most likely places for the majority of information that is held and the impact that would be placed on the council's services in order to carry out its day to day functions to have to fully comply with this request by continuing to search for any more information, which it considers is unlikely to be held, the Commissioner is that satisfied that the detrimental impact being placed on the council's resources is greater than the public interest in it carrying out further searches.

60. The Commissioner therefore finds that 12(4)(b) of the EIR remains engaged.

Regulation 9 of the EIR – Advice and Assistance

61. When refusing a request for environmental information under regulation 12(4)(b) of the EIR on the grounds of cost, public authorities should provide the requester with appropriate advice and assistance.

62. Regulation 9 of the EIR is the regulation that requires a public authority to provide advice and assistance, as far as it would be reasonable to expect the authority to do so.

63. Regulation 9(3) of the EIR states that where a public authority conforms to a Code of Practice, it will be regarded as complying with its regulation 9 obligations.

64. Part III of the EIR Code of Practice[3] provides guidance to public authorities as to the recommended practice and steps to take when providing advice and assistance.

65. On review of the case, the Commissioner is satisfied that the council has provided reasonable advice and assistance in advising what information it has managed to locate in the time it has so far, albeit some is considered to be exempt information.

66. As the Commissioner has found regulation 12(4)(b) to be engaged and appropriate advice and assistance has been provided, it would be for the complainant to now decide whether he wants to revise the scope of his request to pursue the information that has been located by the council and if so make a revised request to the council for it.

[3] https://ico.org.uk/media/for-organisations/documents/1644/environmental_information_regulations_code_of_practice.pdf

Right of appeal

67. 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

68. 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.

69. 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 .....

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