

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

Date: 19 September 2017

Public Authority: Manchester City Council
Address: Town Hall
Manchester
M60 2LA

Decision (including any steps ordered)

1. The complainant made a request to Manchester City Council ('the Council') for all public responses to the St Michaels planning application. The Council refused to comply with the request under regulation 12(4)(b) EIR.
2. The Commissioner's decision is that the Council has correctly applied regulation 12(4)(b) EIR to the request. It also complied with regulation 9 in the handling of this request.
3. The Commissioner notes that the Council provided its refusal notice outside of the statutory twenty working days and has therefore breached regulation 14(2) of the EIR.
4. The Commissioner requires no steps to be taken.

Request and response

5. On 13 February 2017, the complainant wrote to Manchester City Council ('the Council') and requested information in the following terms:

"I would like to request all the public responses to the St Michaels planning application which is 114664/FO/2016. I would like to see these answers before the decisions unfold for the future of this site.

I believe all reactions need to be seen in the public domain, redacting only addresses and personal information. For transparency, the public deserve to see more than the summaries presented in the Planning Executive meeting notes.

I also request the dates that Leese and Bernstein have met with Neville to discuss the scheme. I would like to have the meetings that Manchester City Council have met with Zerum and Make Architects in the last five years.

I would also like to request when the scheme changed significantly than the presentation of the December 2015 Strategic Regeneration Framework.

Please summarise the timeline as to when the proposal instead became the skyscraper models versus the green roof low-mid rise proposed and presented at MIPIM 2015. I would also list to know when the term "demolition" was introduced" for heritage, as this word was not used in the December 2015 report."

6. The complainant requested an internal review on 14 March 2017 because no response had been provided to his request after 20 working days as required under regulation 5(2) EIR.
7. Following an internal review the Council wrote to the complainant on 21 April 2017 and provided some information within the scope of the request but refused to provide the public responses to the planning application. It cited the regulation 12(4)(b) EIR, manifestly unreasonable, as the basis for refusal.

Scope of the case

8. The complainant contacted the Commissioner on 24 April 2017 to complain about the way his request for information had been handled. Specifically that the public responses to the planning application were withheld. The complainant pointed out that a similar FOI request to view all public comments regarding the Northern Campus Framework had been fulfilled by the Council.
9. The Commissioner has considered whether the Council correctly applied regulation 12(4)(b) EIR to the request.

Reasons for decision

Regulation 12(4)(b)

10. Section 12(1)(a) of EIR states that *"Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if – an exception to disclosure applies under paragraphs 4 or 5."*
11. Section Regulation 12(4)(b) EIR states that, *"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;"*
12. The Council has referred to the cost limit set out under the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations') as a starting point to assess the reasonableness of this request. Whilst the Regulations do not apply under EIR, the Commissioner has recognised in her guidance that *"...we take these regulations to give a clear indication of what Parliament considered to be a reasonable charge for staff time."*¹
13. The Regulations stipulate that a cost estimate must be reasonable in the circumstances of the case. The limit given for local government is £450 or 18 hours work. Included within the limit the authority can consider the time taken to:
 - (a) determine whether it holds the information
 - (b) locate the information, or a document which may contain the information
 - (c) retrieve the information, or a document which may contain the information, and
 - (d) extract the information from a document containing it.

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

14. Additionally the Commissioner's guidance on regulation 12(4)(b) states that the cost of considering exempt information can be taken into account:

"Under FOIA the cost of considering whether information is exempt cannot be taken into account under section 12 (the appropriate costs limit) but can be taken into account under section 14(1) (vexatious requests). This is because section 12 limits the activities that can be taken into account when deciding if the appropriate limit would be exceeded. This is not an issue under the EIR. The costs of considering if information is exempt can be taken into account as relevant arguments under regulation 12(4)(b)."

15. The Commissioner agrees with the use of the Regulations as a starting point under EIR, but also notes that all of the circumstances of the case must be taken into account to determine whether a request can be deemed manifestly unreasonable on the grounds of cost under EIR. Including:

- *the nature of the request and any wider value in the requested information being made publicly available;*
- *the importance of any underlying issue to which the request relates, and the extent to which responding to the request would illuminate that issue;*
- *the size of the public authority and the resources available to it, including the extent to which the public authority would be distracted from delivering other services.*

16. In its response to the complainant the Council acknowledged that all exceptions under EIR are subject to the public interest test and that the Council must apply a presumption of disclosure when considering that test. It considered the assessment of section 12(4)(b) on a calculation of time being in excess of the usual 18 hours allowed under the Freedom of Information Act (FOIA) in the first instance.

17. A significant element in its calculation was the time required to redact personal information. The Council provided evidence of privacy statements made to the general public submitting comments on planning applications:

"Please note any comments you make will be placed on a publicly available case file and will be summarised in reports that will be available on the Council's website. Your personal details will not be included in these reports. Your comments and details will not be viewable online."

18. The Commissioner is therefore satisfied that persons submitting comments may reasonably expect their personal details to be redacted.
19. In the initial response the Council considered that it would take up to 250 hours based on the retrieval, reading, redacting and copying of 1500 representations. However in its response to the Commissioner's questions the Council revised the estimate to 85 hours. The Council advised that *"a controlled exercise was subsequently carried out and it was found that it took 35 minutes to read and check 10 representations in full for personal information."*
20. The Council explained that redactions on the grounds of personal information may be necessary in the body of text of the representation and not just in the start or end, meaning that each one needed to be read and considered in full.
21. The Council provided the Commissioner with a sample of redacted representations. The Commissioner noted that the representations varied greatly in length and detail, and that personal information may also appear in the body of the text. This confirms that they would need to be read in full to ensure that all personal information is identified.
22. From the information provided the Commissioner can derive that the Council estimates 3.5 minutes per representation. The majority of representations provided in the sample were quite brief, with one being exceptionally long. Upon reviewing the sample the Commissioner does not consider that it will necessarily take 3.5 minutes to review the contents of each of the representations. However even if a more conservative assumption of 2 minutes were to be applied this would still equate to over 50 hours of work which remains well in excess of the 18 hour time limit.
23. With regard to the previous information request concerning the Northern Campus Framework which the complainant argues sets a precedent in relation to this case. The Council has explained there was a significant difference in the volume of representations (89 comments), that the information had already been collated at the time of the request and that far less personal data had to be redacted. It also argues that the publicity and neighbourhood notification process for a planning application is separate and governed by different legislative processes than that associated with a framework.
24. The Commissioner is therefore satisfied that in this case that regulation 12(4)(b) EIR is engaged correctly, due to the volume of information requested that will require redaction prior to disclosure. The Commissioner has proceeded to consider the public interest test.

Public interest test

Public interest arguments in favour of disclosure

25. The Council states

"At the time of the request, there was significant public interest in a planning application for the demolition of a number of older buildings and the erection of 2 buildings of 31 and 21 storeys. Therefore it is in the public interest to see the representations received and understand both negative and positive factors of the proposals, issues and concerns."

26. The Council has advised the complainant that it will arrange for the full comments to be viewed at Council premises by appointment after the publication of the planning report summarising the comments received. It will be one week before the Planning Committee is due to consider the matter. This is in line with the Council's procedures and the deadline will allow for the file and comments to be prepared with the appropriate redactions.

Public interest in favour of maintaining the exception

27. The Council does not consider that it is in the public interest to impose a manifestly unreasonable burden upon it to comply with the request. It maintains that there is a stronger public interest in the Council being able to carry out its core statutory functions with regards to planning matters. It argues that fulfilling this request would involve diverting resources from delivering core services including advising and progressing planning applications in line with strict deadlines.

Balance of the public interest

28. The Commissioner considers that there is a public interest in transparency relating to information about the planning applications as this will impact individuals within this locality.

29. The Commissioner accepts that Council has standard procedures for making the comments within representations available to the public, and that the information requested will be available in due course. Conversely she appreciates that the method and timescale are not ideal for the purposes of the complainant.

30. Nonetheless, there is a strong public interest in not placing a manifestly unreasonable burden upon public authorities. In this case due to the volume of representations falling within the scope of the request and the likelihood that they will contain third party personal data not easily

isolated without a line by line review prior to redaction, it would be manifestly unreasonable to comply with it.

31. Therefore, on balance, the Commissioner considers that the public interest in favour of disclosure is outweighed by the public interest in maintaining the exception.

Regulation 9 – advice and assistance

32. Regulation 9(1) states 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."*

33. The Council explained to the complainant that the representations will be summarised into a report to the relevant Committee of the Council (date not known at the time of the Council's response). The report will include the name of the officer to contact to arrange to view the representations received and will be published on the Council's website via this link:

http://www.manchester.gov.uk/meetings/committee/10/planning_and_highways_committee

34. The Council has subsequently also advised the Commissioner that *"It may be worth noting that the application in question is currently pending amendment and a further round of publicity will be carried out. To assist the requester a summary of the principle comments made to date could be provided."*
35. The Commissioner considers that the Council has provided the complainant with advice and assistance as to how his request could be fulfilled by standard processes so as not to impose a manifestly unreasonable burden upon the Council to comply. It did therefore comply with Regulation 9 in this case.
36. The Commissioner notes that it would be helpful of the Council to contact the complainant to inform him of the date that the report will be published and the name of the contact to arrange to view the representations when this is known.

Regulation 14(2): Statutory time for response

37. Regulation 14(2) states that if a request for environmental information is refused by a public authority, the refusal shall be made no later than twenty working days after the date of receipt. In this case the Council did not respond to the request within the time for compliance.

26. On this basis the Commissioner must find a breach of regulation 5(2).

Right of appeal

38. 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

39. 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.
40. 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