

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 9 November 2022

**Public Authority:** Cheshire West and Chester Council  
**Address:** 58 Nicholas Street  
Chester  
CH1 2NP

#### **Decision (including any steps ordered)**

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1. The complainant requested information from Cheshire West and Chester Council ("the Council") about the proposed development of a football stadium, hotel and sports facilities. The Council refused the request under regulation 12(4)(b) of the EIR, manifestly unreasonable requests, on the grounds that the request was vexatious.
2. The Commissioner's decision is that the Council was not entitled to rely on regulation 12(4)(b) of the EIR to refuse the request.
3. The Commissioner requires the Council to take the following step to ensure compliance with the legislation:
  - revisit the request and either disclose the requested information or issue a fresh response that does not rely on regulation 12(4)(b).
4. The Council must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

## Request and response

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5. On 5 December 2021, the complainant wrote to the Council and requested information in the following terms:

“I refer to my letter dated 11/11/21 requesting the details which you say were submitted as draft proposals in error to your office. Therefore may I have access to the template of the proposals which have been made referring to this subject”

6. The public authority refused to provide the information and relied on the manifestly unreasonable exception under regulation 12(4)(b) of the EIR as its basis for doing so. It noted that the complainant had made repeated requests for “essentially the same information” within a period of a few months and that it had provided its grounds for refusing to provide the information in response to a previous request. The public authority upheld this position at internal review.

## Reasons for decision

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7. The following analysis sets out why the Commissioner has concluded that the Council was not entitled to rely on regulation 12(4)(b) of the EIR in this particular case.
8. Regulation 12(4)(b) of the EIR allows a public authority to refuse a request on the grounds that it is vexatious.<sup>1</sup> In determining whether a request is vexatious, the key question is whether complying with the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.<sup>2</sup>
9. The Council’s position that is that answering this request, which forms part of a pattern of repeat requests, is likely to cause a disproportionate and unjustified level of disruption to the Council and be over burdensome for its officers within the service area affected. The Council argues that the submission of these requests within a short timescale

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

<sup>2</sup> <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/dealing-with-vexatious-requests-section-14/what-does-vexatious-mean/>

demonstrates unreasonable persistence in seeking the same or similar information and that the likely impact on the Council of dealing with the requests is not proportionate or justified, taking in to account their value or purpose. It also states that answering the requests, "will and has led to a significant diversion of resources, where a number of responses have already been supplied".

10. The Council also stated that it had already explained to the complainant on 9 November 2021 in a refusal notice issued in response to a previous request that it was withholding the requested information under regulation 12(4)(d) of the EIR (material which is still in the course of completion, unfinished documents and incomplete data).
11. The Commissioner accepts that the complainant had asked for similar information on several occasions in the preceding months, that answering these repeated similar request may be placing a burden upon the Council and that the complainant was advised on 9 November 2021 of the reason that the Council would not provide the information at that time. However, the exception under regulation 12(4)(d), by its very nature, is one that applies only over a temporary period.
12. Regulation 14(4) of the EIR states:

"If the exception in regulation 12(4)(d) is specified in the refusal, the authority shall also specify, if known to the public authority, the name of any other public authority preparing the information and the estimated time in which the information will be finished or completed."
13. Having considered the refusal notice that was issued on 9 November 2021 the Commissioner notes that no indication of the estimated time in which the information will be finished or completed was provided to the complainant.
14. The Council indicated in its submissions to the Commissioner that discussions around the possibility of the development are in their preliminary stages. It may well therefore be the case that the Council was unable to provide such an estimate when issuing the refusal notice. Nevertheless, in the Commissioner's view, given the complainant had not been given any indication as to when the previous basis for refusing to provide the information would cease to apply, the number and frequency of the similar requests are not sufficient for this request to be considered manifestly unreasonable. The Commissioner's decision is therefore that the Council was not entitled to rely on regulation 12(4)(b) of the EIR in this particular case.

## Right of appeal

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15. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

16. 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.
17. 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 .....**

**Victoria James**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**