

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 1 November 2022

Public Authority: Swindon Borough Council
Address: Civic Offices
Euclid Street
Swindon
SN1 2JH

Decision (including any steps ordered)

1. The complainant requested information from Swindon Borough Council ("the Council") relating to the record kept of rubbish collections on a particular day. The Council refused the request under section 14(1) of FOIA (vexatious requests).
2. The commissioner's decision is that the request should have been dealt with under the EIR and that he is not satisfied that the request was vexatious, or manifestly unreasonable.
3. The Commissioner requires the Council to take the following step to ensure compliance with the legislation.
 - Issue a fresh response to the complainant, which does not rely on regulation 12(4)(b) of the EIR.
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 the Act and may be dealt with as a contempt of court.

Request and response

5. On 7 October 2020, the complainant made the following request for information to the Council:

“I now request, under the Freedom Of Information Act 2000, that you email to me a copy of the original Incab entries (before being transferred onto an excel spreadsheet) detailing the locations of the recycling cart in question between 7.00 am and 11.00 am on 9 Jan. 2020.”
6. On 23 October 2020 the Council informed the complainant that it was considering applying sections 12 and 14 to the complainant’s request and that it was unable to respond to the request or any further questions on the same subject.
7. In correspondence between 23 October 2020 and 18 February 2021 the complainant made plain their dissatisfaction with the Council’s response of 23 October 2020 and reiterated their original request at least twice.
8. On 18 February 2021 the Council issued a refusal notice in response to “various numerous” requests it had received from the complainant on the subject of bin collections on 9 January 2020. This refusal notice relied solely on section 14(1) to withhold information.
9. Between 18 February 2021 and 16 December 2021 the complainant expressed their dissatisfaction with the Council’s response and reiterated their request a number of times.
10. On 16 December 2021 the Council issued an internal review of its initial response of 18 February 2021. This review upheld the Council’s decision to rely upon section 14(1) to withhold the requested information.

Scope of the case

11. The complainant contacted the Commissioner on 28 December 2021 to complain about the way their request for information had been handled.
12. This notice covers whether the Council correctly determined that the request was vexatious.

Reasons for decision

Environmental Information Regulations 2004 (EIR)

13. The Commissioner considers that the Council should have handled this request under the EIR. This is because the request was for information about the collection of waste, which under regulation 2(1)(c) is an activity that affects waste – a factor, as listed under regulation 2(1)(b).

Regulation 12(4)(b) – manifestly unreasonable

14. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable.
15. The Commissioner considers that a request can be manifestly unreasonable either if the request is vexatious, or where compliance with the request would incur a manifestly unreasonable burden on the public authority both in terms of costs and the diversion of resources.
16. The Commissioner considers that the Council has relied upon the former interpretation of regulation 12(4)(b), that it considers the request vexatious.
17. The Commissioner's guidance on regulation 12(4)(b) states that public authorities should refer to his guidance on vexatious requests under section 14 of FOIA when considering whether a request for environmental information is manifestly unreasonable on the grounds that it is vexatious.
18. In his published guidance on dealing with vexatious requests, the Commissioner considers the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.

The Council's view

19. The Council informed the Commissioner that:
 - a. The complainant has made numerous requests, each of which has lead to further correspondence.
 - b. The Council has spent a disproportionate amount of time in dealing with requests on this topic.
 - c. The request is of little value.

- d. Accusations levelled at Council staff of deliberately altering information have been distressing.

The complainant's view

20. On 21 December 2020 a former Head of Recycling Ian James provided a screenshot of part of an inCab overview screen. The complainant argues that, as this screenshot was provided, seemingly without issue, it shouldn't be so burdensome for the Council to provide the requested information in the same manner.

The Commissioner's decision

21. In cases where a public authority is relying on regulation 12(4)(b), it is for the public authority to demonstrate why it considers that a request is a disproportionate, manifestly unjustified, inappropriate or an improper use of the EIR.
22. The complainant had made two requests on the subject of the bin collection prior to the request with which this notice is concerned.
23. It is not inconceivable that dealing with the two prior requests could have been burdensome to the Council. The Council, however, failed to sufficiently demonstrate that fact in its submissions to the Commissioner. The Commissioner therefore has not considered that the two previous requests were of any significant inconvenience to the Council and has therefore not considered them in his consideration of the potential burden of the request in question.
24. Prior to the complainant's request of 7 October 2020 the Council disclosed a "Tracker Output" Excel file. This file provides a log of timestamped locations of the rubbish collection truck along its entire route. This file was downloaded from the inCab system. The complainant's request on 7 October 2020 was to see the original data from which this Excel file was created.
25. As mentioned above, on 21 December 2020 Ian James provided a screenshot from the inCab system showing an overview of the information logged on 9 January 2020. Given this fact, the Council has not made sufficiently clear why it would be disproportionately burdensome to provide copies of the original data either in its correspondence to the complaint or in its submissions to the Commissioner.
26. The Council has not provided sufficient explanation to support its assertion that the complainant's request of 7 October 2020 was vexatious. The Commissioner accepts that the complainant's insistent correspondence on such a trivial topic has, since they made their initial

request, become vexatious, but cannot accept, on the evidence provided, that the initial request itself was disproportionately burdensome on the Council's resources, manifestly unreasonable, or vexatious.

27. The Commissioner's decision is that the request was not manifestly unreasonable and he orders the Council to issue a fresh response which does not rely on regulation 12(4)(b).

Procedural Matters

28. Regulation 5(2) states that such information shall be made available "as soon as possible and no later than 20 working days after the date of receipt of the request."
29. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the request within 20 working days, the Council has breached regulation 5(2) of the EIR.
30. The complainant has asserted that a refusal notice issued three months beyond the statutory 20 working day limit is invalid. This is not the case. It is simply a late refusal notice.

Other Matters

31. On 16 March 2021, the Council wrote to the complainant "it is clear that you have expressed clear dissatisfaction about our the handling of your request." Despite this acknowledgement of the complainant's dissatisfaction the council did not begin its internal review process until December 2021. An internal review does not need to be explicitly requested, any statement of dissatisfaction with a public authority's initial response should initiate the authority's internal review process.

Right of appeal

32. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

33. 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.
34. 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

**Catherine Fletcher
Team Manager
Information Commissioner's Office
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