

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

Decision notice

Date: 4 February 2023

Public Authority: Milton Keynes County Council
Address: 1 Saxon Gate East
Milton Keynes
Buckinghamshire MK9 3HG

Decision

1. The Commissioner's decision is that the complainant's request about the Blakelands planning application can be categorised as manifestly unreasonable under regulation 12(4)(b) of the EIR. In relation to the timeliness of its responses, Milton Keynes City Council (MKCCC) breached regulations 5(2), 14(2) and 11(4). It is not necessary for MKCC to take any steps.

Request and response

2. The complainant made the following information request to MKCC on 21 December 2021:

"I am just following up with you over the information provided by [redacted] to MKC.

I have noted from the correspondence published that MKC retained copies of [redacted]'s documentation that was also provided to [redacted].

I would like to request that you publish all of [redacted]'s documentation provided to MKC as part of [redacted] review. In particular, I would like to see any emails or notes with [redacted]

I would hope this can be done without the need for a FOI/EIR request, although please consider this in the alternative to prevent the deletion of any such documentation currently held by MKC.”

3. MKCC disclosed a large amount of relevant information, with some withheld under different EIR exceptions: namely those for personal data, draft or unfinished material, and the interests of the person who provided the material. At internal review MKCC indicated it now considered the request to manifestly unreasonable under regulation 12(4)(b) of the EIR. MKCC confirmed that was its final position in its submissions to the Commissioner.

Reasons for decision

4. This reasoning focusses on whether, at this point, MKCC is entitled to refuse to consider the request further under regulation 12(4)(b) of the EIR. It will also consider the timeliness of MKCC's responses. The Commissioner has considered the exceptions that MKCC relied on to withhold some information under 'Other Matters' but he has not made a formal decision on those exceptions.
5. By way of background, the Commissioner understands that the request concerns a contentious planning application for a warehouse scheme at Blakelands. MKCC's Planning Services department was subsequently subject to an investigation by an external consultant that was itself then scrutinised. Requests about the planning application have been the subject of other complaints to the Commissioner and at least one appeal to the First-tier Tribunal (Information Rights).
6. Under regulation 12(4)(b) a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable.
7. A request may be manifestly unreasonable because it is vexatious, as in this case, or because of the burden complying with the request would impose on the authority, in terms of cost or time.
8. MKCC first indicated that it considered the request to be manifestly unreasonable in an interim internal review decision of 13 April 2022. In a submission to the Commission MKCC noted that it sent a substantive internal review response to the complainant on 27 May 2022. MKCC considers that correspondence provided sufficient information on the history of the request, as well as its reasons for disclosing or withholding the certain information. That letter also explained, "MKC now considers the request to fall within the definition of manifestly unreasonable as per Regulation 12(4)(b) of the Environmental Information Regulations 2004,

but MKC had however chosen to respond as if it were a request in line with the Environmental Information Regulations 2004, despite not being required to".

9. MKCC says it had therefore responded to the request, despite over 5,000 pages being covered by the request. This had taken weeks of work to prepare and was a disproportionate and unnecessary burden on MKCC.
10. MKCC urged the Commissioner to consider the volume of complaints received from the complainant about information requests they have made to MKCC. MKCC considers that the requests have focused on a particular planning application and information surrounding it to a vexatious extent.
11. MKCC noted that the complainant's request for an internal review of its initial response to this request of 18 February 2022 also came within 37 minutes of having been sent a 1,508-page disclosure. Given the volume of information the complainant would have needed to review it is clear to MKCC that the complainant challenged the Council before they had considered the response in full.
12. MKCC provided the Commissioner with an email it received from the complainant in which they confirm that they "would make the point that I estimate more than 90% of what has already been disclosed is information which is readily and publicly accessible from either MKC's CMIS and planning portal websites".
13. As per MKCC's response letter, despite acknowledging that 90% of the information is already available the complainant made a blanket request for all documents provided to MKCC by the named individual named as part of the review also referred to in the request. MKCC says that the complainant refuted its attempts to assist them with refining their request, with its last email going unacknowledged.
14. Furthermore, MKCC said, the complainant pushed MKCC to prioritise a small part of the request. MKCC has cause to believe that that information was, in fact, the only information they sought, but they refused to refine their request. The complainant therefore made a blanket request despite having acknowledged the volume of information about this planning application and independent review that had already been disclosed. In MKCC's view this also evidences its attempts to refine the request to a more manageable limit, in line with its regulation 9 obligation to provide advice and assistance, which the complainant declined.

15. MKCC said that up to this point it has honoured a request which it could have legitimately refused under regulation 12(4)(b) as manifestly unreasonable. However, to spend further resource revisiting this request would result in nothing further than additional burden on the stretched resources of both the Commissioner and MKCC.
16. The Commissioner has not taken account of any burden this matter may cause to him; his focus is the effect of the request on MKCC.
17. The Commissioner was not aware of an especially high volume of complaints about MKCC from the complainant on the same subject, in recent years. MKCC subsequently sent the Commissioner a table of requests the complainant had sent prior to the current request. This shows that from October 2018 the complainant submitted 11 requests about the Blakelands planning application and one other application. MKCC described the requests as "blanket" requests and evidence a pattern of a "witch hunt".
18. MKCC has also noted that the Blakelands planning application has received significant public scrutiny through the proper channels ie planning enforcement action, planning inspectorate investigations, and accountability at relevant Council Committees.

The Commissioner's conclusion

19. Twelve requests for information over three years is more than most people submit to one public authority. However, given the concern about the planning application in question the Commissioner does not consider it to be a totally unreasonable volume of requests.
20. The Commissioner has, however, taken account of the fact that the requests are often for large volumes of information and that, according to MKCC, the complainant will always challenge the response they receive. The Commissioner has also taken account of MKCC's view that, in fact, the focus of the complainant's request was a small amount of email correspondence but that their request had a very wide scope that the complainant would not refine. Regarding the email correspondence, MKCC says it has not withheld any relevant email correspondence and all that it held was included in its 1,500 page disclosure.
21. Key for the Commissioner in this case is that within 40 minutes of receiving over 1,500 pages of information, the complainant requested an internal review. It does not seem possible to the Commissioner that the complainant could have carefully considered the material they received before disputing that response. In that respect, the Commissioner must assume that the complainant immediately

requested a review without having carefully considered the disclosed information in order to impose an unnecessary burden on MKCC.

22. Considering all the circumstances, the fact that the complainant received 1,500 pages of relevant information in response to this request, that they had acknowledged the majority of the information they had requested was already in the public domain and that formal processes exist to challenge planning applications, the Commissioner's decision is that MKCC is entitled to apply regulation 12(4)(b) to the complainant's request at this point. He has gone on to consider the associated public interest test.
23. Regulation 12(2) of the EIR states that a public authority shall apply a presumption in favour of disclosure. There is a public interest in MKCC being open and transparent about the planning decisions it makes, particularly in controversial cases such as the one that is the focus of the request in this case. However, as noted, a formal planning process exists for scrutinising and commenting on planning applications and, through Judicial Review, challenging the lawfulness of planning decisions. The specific planning decision in this case has been subject to scrutiny and investigation. MKCC has also disclosed a great deal of relevant information in response to this request, which it may have been entitled to refuse to do under regulation 12(4)(b) because of the associated burden and because a lot of it appears to have already been in the public domain.
24. The formal planning processes above, and that MKCC did not refuse the request initially, address the public interest in transparency to a satisfactory degree, in the Commissioner's view.

Timeliness

25. Under regulation 5(2) of the EIR, a public authority must make environmental information available as soon as possible and no later than 20 working days after the date of receipt of the request.
26. Under regulation 14(2) a public authority must issue a refusal notice in respect of any excepted information within the same timescale.
27. Under regulation 11(4) a public authority should provide an internal review decision as soon as possible and within 40 working days of the request for one.
28. In this case, the complainant submitted their request on 21 December 2021. MKCC made information available and issued a refusal on 18 February 2022. As noted, the complainant requested an internal review on the same day and, while it provided an interim internal review in April, MKCC did not provide its substantive review until 27 May 2022.

29. The Commissioner therefore finds that MKCC breached regulation 5(2), 14(2) and 11(4) of the EIR.

Other matters

30. The Commissioner has not formally considered in this notice the exceptions MKCC applied to the information it withheld, nor has he seen that information. But he has reviewed MKCC's reasoning in its correspondence to the complainant of 27 May 2022.
31. In that letter MKCC explained that the individual named in the request and their interviewees were under no obligation to provide MKCC with some information that it withheld. It said the review was not a judicial or quasi-judicial process and there was no compulsion to engage. The witnesses and the individual themselves also could not be compelled to agree to its being made public. Indeed, while the individual agreed to some material being disclosed, MKCC said it has written confirmation that they supplied much of it in the expectation that it would not be disclosed. MKCC also said it has no recorded consent or agreement from any interviewee in this respect either, and no evidence of any such agreement is in the public domain nor has been provided to it. MKCC considered that there is material that would cause undue adverse effects (ranging from annoyance and vexation to embarrassment, harm, or distress) to the individuals if it were disclosed.
32. Whilst acknowledging the circumstances behind the request, the Commissioner considers that, had he made a formal decision on the matter, it is highly likely that he would have found personal data should be redacted under regulation 12(3)/13 and that information provided in confidence could be withheld under regulation 12(5)(f) of the EIR.
33. MKCC also explained in its May 2022 letter that the individual named in the request ceased work on their report before it was finalised and also resigned their commission. Although a preliminary report was circulated, there is considerable draft material (including that used as an aide-memoire). MKCC therefore confirmed that the exception under regulation 12(4)(d) of the EIR was engaged as draft material remains unfinished. This, it said, had been determined by the Information Tribunal case of Secretary of State for Transport v the Information Commissioner (EA/2008/0052, 5 May 2009). The Commissioner considers it is likely that, had he made a formal decision on it, he would have found that MKCC was also entitled to rely on regulation 12(4)(d) to withhold some information.

Right of appeal

34. 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@justice.gov.uk

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

35. 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.
36. 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

Cressida Woodall
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