

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

Date: 13 February 2023

Public Authority: Spelthorne Borough Council
Address: Knowle Green
Staines-upon-Thames
Middlesex
TW18 1XB

Decision (including any steps ordered)

1. The complainant has requested information about Spelthorne Borough Council's ('the Council') decision to pause development in Staines town centre, pending the adoption of a Local Plan. The Council refused the request, citing regulations 12(4)(b) (Manifestly unreasonable) and 12(4)(c) (Request formulated in too general a manner) of the EIR.
2. The Commissioner's decision is that the Council was entitled to apply regulation 12(4)(b) to refuse the request.
3. The Commissioner requires no steps as a result of this decision.

Request and response

4. On 27 May 2022, the complainant wrote to the Council and requested information in the following terms:

"In terms of the Environmental Information Regulations 2004, please could you send me the following:

All documents and communications, produced by all means and by all parties, regarding the "Visioning" project and the process of appointing a facilitator for the project.

...

All documents and communications, produced by all means and by all parties, regarding the moratorium on development in Staines.”

5. The Council responded on 14 June 2022. It refused both parts of the request under regulation 12(4)(b) of the EIR, on the grounds that compliance would involve unreasonable costs and the diversion of resources. It said that regulation 12(4)(c) was also engaged. It said that it may be possible to comply with a refined request, if the complainant could reduce its scope and identify particular information of interest.
6. The complainant told the Council he was willing to withdraw the first part of the request. However, he asked it to conduct an internal review of its response to the second part of the request (ie regarding the moratorium on development). Following an internal review, the Council maintained that regulations 12(4)(b) and 12(4)(c) of the EIR applied to the second part of the request.

Reasons for decision

7. The Commissioner is satisfied that the request was for environmental information and that it fell to be dealt with under the EIR.
8. The analysis below covers the Council's reliance on regulation 12(4)(b) of the EIR to refuse the second part of the request. In considering this matter, the Commissioner has taken account of his guidance on regulation 12(4)(b)¹.
9. The Council argued that the request was manifestly unreasonable because it would impose a significant and disproportionate burden, in terms of the time and resources that would be required to locate, extract, consider and communicate any relevant information that it held.
10. Regulation 12(4)(b) of the EIR provides that a public authority may refuse to disclose information to the extent that the request for information is "manifestly unreasonable". The exception can be applied where, as the Council has argued, it would impose a manifestly unreasonable burden upon the authority to respond to the request for information. The exception exists to protect public authorities from exposure to a disproportionate burden, in terms of the amount of time

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

and resources needed to respond to a request. In effect, the exception is similar to section 12(1) of FOIA, where the cost of complying with a request can be taken into consideration.

11. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') set an upper limit for the costs involved in responding to requests for information made under FOIA. Where, on receipt of an FOIA request, a public authority estimates that responding to it will exceed the upper limit, it is not required to respond to the request. The upper limit for local authorities is £450, calculated at £25 per hour (meaning that if complying with an FOIA request would take more than 18 hours' work, the request may be refused).
12. There is no equivalent upper limit specified for EIR requests. However, for the purposes of regulation 12(4)(b), the Commissioner considers that public authorities may use the above figures as an indication of what Parliament regards as being a reasonable level of burden (ie the costs that public authorities should be expected to absorb when responding to EIR requests). However, they must also balance the estimated cost of responding to the request against the public value of the information which would be disclosed, before concluding whether the exception applies.
13. When estimating the time it would take to respond to an EIR request, a public authority can consider the time taken to:
 - determine whether it holds the information;
 - locate the information, or a document which may contain the information;
 - retrieve the information, or a document which may contain the information;
 - extract the information from a document containing it; and
 - consider the application of any exceptions.
14. The request asked for information underpinning the Council's decision to suspend public and large scale development, in Staines town centre, until the Staines Development Framework (the area's Local Plan) has been adopted.
15. The complainant argues that the moratorium has cost over £900,000 of public money to implement and therefore that there is significant public interest in local residents being able to scrutinise how the decision was made.

16. The Council said that preliminary searches revealed that it holds a significant number of relevant documents and communications. It would be time consuming to extract and collate the requested information, as it is not held in a single data source. In order to calculate a reasonable estimate of the work involved, the Council carried out a sampling exercise, based upon what it believed to be the quickest method of gathering the requested information. It explained to the complainant:

“Our searches have revealed we would have to ask a number of staff to perform several manual searches which include;

- Extracting various documents from various systems,
- Reviewing documents/emails to determine if they fall within the scope of your request,
- Reviewing documents/emails to determine if any exceptions apply

It is estimated that it would take at least 30 minutes to review each record and as there are at least 250 documents/emails we estimate that it would take over 18 hours to comply with this part of your request. We consider that it would be manifestly unreasonable to have to review the entire content of these files in a granular way in order to apply the EIR, which would include a process of identifying what information could and equally could not be disclosed.”

17. The Council’s sampling exercise resulted in an estimate that compliance with the request would take at least 125 hours (thereby costing over £3000). From the information he has seen, the Commissioner considers that the Council’s estimate is reasonable. He has reached this conclusion on the basis that no time frame was specified in the request (effectively making it ‘open ended’), and therefore that a large number of documents would need to be consulted, with the likelihood that some of the information would engage non-disclosure exceptions, which would need to be considered.
18. While he has no reason to doubt that 30 minutes would need to be allotted to locating and reviewing each document, he notes that even if this estimate was reduced to just ten minutes per document, the time needed would still amount to over 40 hours, thereby exceeding the 18 hour limit set out in the Fees Regulations, by some considerable way.
19. The Commissioner finds it unlikely that the Council has resources on hand such that it could absorb this level of work without it adversely impacting other service areas. He is therefore satisfied that the allocation of the resources necessary to process the request would have a significant and disruptive impact on the Council’s services.

20. The Commissioner acknowledges that there is some public value in the information being disclosed in this case, as it relates to planning issues that impact on the wider general public. He also notes that it is the complainant's belief that the public money spent on the moratorium was excessive and that the decision merits external scrutiny. On that point, the Commissioner notes that the Council has published a lot of information about the decision², and the background to the decision³, on its website. He also notes that the reason for the moratorium is to pause large scale public development which could potentially be 'out of sync' with the area's Local Plan, which is still being determined.
21. Finally, the Commissioner notes that the Council believes that some of the information would attract one or more of the non-disclosure exceptions and therefore that it is being asked to undertake a costly process which would not, in all likelihood, result in the full disclosure of information.
22. Taking all the above into account, the Commissioner considers that the costs outlined above are extensive and that the public value in the disclosure of the information, in view of information which the Council has already published, would not make the request reasonable in this case. He is therefore satisfied that compliance with the request would impose an unreasonable burden upon the Council, and that regulation 12(4)(b) is engaged.
23. The Commissioner has gone on to consider the public interest test, as required by regulation 12(1)(b) of the EIR. The test is whether, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
24. There will always be some public interest in disclosure, to promote transparency and accountability in relation to decisions made by public authorities. Disclosure in this case would encourage informed public debate on, and confidence in, planning decisions relating to the area's Local Plan, which ultimately leads to better public engagement in local decision making.
25. However, in this case, the resources which would be needed in order to respond to the request would be significant, and disproportionate to the public interest in disclosure at this time, whilst the Council is still determining its Local Plan. The Commissioner is satisfied that the

² <https://democracy.spelthorne.gov.uk/ieDecisionDetails.aspx?AIId=12496>

³ <https://democracy.spelthorne.gov.uk/mgIssueHistoryHome.aspx?IId=12723>

Council does not have resources on hand such that it could absorb the necessary level of work without this adversely impacting other service areas, which would run counter to the public interest. There is already considerable information on the decision underpinning the moratorium in the public domain, which goes some way to serving the public interest in transparency.

26. In light of this, the Commissioner considers that there is insufficient wider public interest in this matter to justify the considerable time and resources it would take the Council to comply with the request. The Commissioner is therefore satisfied that, in this case, the balance of the public interest lies in the exception being maintained.

Regulation 12(2)

27. Regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions.
28. As set out above, in this case the Commissioner's view is that the balance of the public interests favours the maintenance of the exception, rather than being equally balanced. This means that the Commissioner's decision, whilst informed by the presumption provided for in regulation 12(2), is that the exception provided by regulation 12(4)(b) was applied correctly.

Regulation 9(1) – duty to provide advice and assistance

29. Broadly, regulation 9(1) of the EIR provides that, where an authority is refusing a request because the applicant has formulated it in too general a manner, the authority should provide advice and assistance to the requestor to help them to revise the request, so that relevant information can be provided.
30. The Council provided the following advice to the complainant when refusing the request:

“From your request it is difficult to ascertain what your particular interest in these documents [sic], however you may wish to refine your request by limiting the information and let us know if there is anything in particular you are searching [sic]. This will assist us in refining our searches and being able to deal with your request.

...in order that the council can identify and locate the information you are seeking, further information is required from you. This means that we need you to provide a more detailed explanation of the information you want access to. For example, this might relate to obtaining information falling with [sic] a particular date, or specific parties.”

31. The Commissioner is satisfied from this, that the Council complied with the requirements of regulation 9(1) of the EIR.

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: 0300 1234504
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

Samantha Bracegirdle
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Wycliffe House
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