

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

Date: 18 January 2023

Public Authority: Ashford Borough Council
Address: Civic Centre
Tannery Lane
Ashford
Kent
TN23 1PL

Decision (including any steps ordered)

1. The complainant has requested information associated with a particular planning application. The above public authority ("the public authority") relied on regulation 12(4)(b) of the EIR to refuse the request as manifestly unreasonable.
2. The Commissioner's decision is that the public authority was entitled to rely on regulation 12(4)(b) of the EIR and that the public interest favours maintaining the exception. However, he considers that the public authority breached regulation 9 of the EIR as it failed to provide adequate advice and assistance.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with advice and assistance to help him refine his request such that it will no longer impose a manifestly unreasonable burden.
4. The public authority must take these steps 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 18 August 2022, the complainant wrote to the public authority and requested information in the following terms:

“Under the Freedom of Information Act 2000, please provide me with the following relating to Planning Application reference 21/01862/AS in whatever format (including e-mails):-

- [1] Copies of all correspondence between (a) Ashford Borough Council, including (without limitation) its planning officers (b) Jessel Farms Limited and (c) Wineburner LLP (together with their respective agents, consultants and advisers) relating to Application reference 21/01862/AS.
 - [2] Copies of meeting minutes of all Ashford Borough Council (ABC) planning case review meetings (including, without limitation, the “high level” case review meeting referred by the ABC planning officer, [redacted], during the Planning Committee meeting on 17th August 2022).
 - [3] Copies of all legal advice between from the ABC in-house legal team (and/or its external advisers) including (without limitation) advice on the opinions of Rural Planning Ltd and the AONB unit.
 - [4] Copies of all internal and external correspondence concerning the L Brown Associates transport report dated December 2021, including all correspondence between ABC planning team and Kent Highways.
 - [5] Copies of all correspondence between ABC planning team (including [redacted]) and Planning Committee members.
 - [6] Copies of all internal and external correspondence relating to residents comments on the planning officer report submitted by [redacted] to member services at Ashford Borough Council and [redacted] of Ashford Borough Council on or around 10.55am on Monday 15th August 2022.
 - [7] Separately, please also provide details of ABC’s compliance programme and details of related internal and external training of staff undertaken during the past 24 months.”
6. The public authority responded on 25 August 2022. It refused the request as manifestly unreasonable – a stance it upheld following an internal review.

Reasons for decision

7. Although he has not seen the requested information, as it is information relating to a planning application, the Commissioner believes that the requested information is likely to be information on a measure affecting the elements of the environment. For procedural reasons, he has therefore assessed this case under the EIR.
8. A public authority may rely on regulation 12(4)(b) of the EIR to refuse a request that is manifestly unreasonable. If complying with a request would impose a significant burden, the request may be manifestly unreasonable.
9. There is no formal cost or time limit beyond which a request becomes manifestly unreasonable. However, the Commissioner considers that the equivalent cost limit in FOIA (which would be £450 or 18 hours for this public authority) is a useful benchmark – though he will take other factors into account.
10. The public authority has explained to the Commissioner that dealing with the first element of the request alone would be likely to be manifestly unreasonable.
11. As a preliminary scoping exercise, the public authority had searched its email server to identify emails that contained the particular planning reference number for this request. That search alone had identified 1,070 emails. The public authority considered that this search alone may not identify all relevant information.
12. Based on previous similar exercises, the public authority estimated that it would need approximately two minutes, on average, to download an email, determine whether it was in scope, decide if any or all of it needed to be withheld and, if not, saving the contents in a repository, ready for disclosure.
13. The public authority also claimed that dealing with element [7] would also be an “extensive exercise” as it would need to trawl its HR records to find details of training.
14. The complainant disputed the public authority’s estimate and argued that some of the information should be easily available.

The Commissioner's view

15. The Commissioner considers that the request was manifestly unreasonable.
16. When a public authority receives a request containing multiple parts it is entitled to look at the burden of dealing with the request as a whole. It is not obliged to deal with the easier parts of the request and only refusing those which are more burdensome. If the request cannot be complied with as a whole, it is the requester's responsibility to decide which items are most important and to submit a narrower request for that information. It is not the public authority's responsibility to step into the requester's shoes and decide which information they should receive.
17. The Commissioner accepts that there is a considerable amount of information that would fall within the scope of the request. It seems very likely that the majority of the 1,070 emails referred to above will fall under one or more of elements [1] to [6] and will therefore require manual review to determine the extent to which each one is disclosable.
18. Even if the public authority were able to deal with each email in one minute (and the Commissioner is sceptical that this is realistic, it would take the public authority only slightly less than 18 hours to review all the emails – and that only deals with one element of a seven-element request.
19. Whilst carrying out this exercise may well identify most of the information falling within elements [2] to [6] of the request as well, dealing with element [7] would require a completely separate search.
20. In its submission, the public authority has indicated that it has interpreted element [7] as only applying to its planning department. Having reviewed the precise wording, the Commissioner is of the view that the request actually encompasses all the public authority's staff. Even at the most conservative estimate, this is likely to add several hours on to the overall workload required to comply with the request.
21. The public authority is not an especially large one and therefore dealing with a request this burdensome is likely to require a relatively significant diversion of resources away from other services in order to comply with the request.
22. The Commissioner is also sceptical that the request has considerable public value. The public authority that it has already published a total of 84 documents relating to this planning application on its planning portal – including a detailed officer's report setting out the reasoning for the recommendations. There is thus a considerable amount of information,

already in the public domain, that explains the decision-making process that the public authority has followed.

23. Given that the request is likely to encompass a number of documents that are already in the public domain, the Commissioner is sceptical that the additional information that would be disclosed as a result of this request would add significantly to public understanding.
24. This view is bolstered by the probability that some of the information not already in the public domain would be exempt from disclosure. In its original refusal notice, the public authority indicated that, even if the request were not manifestly unreasonable, there was a strong likelihood that it would rely on regulation 12(5)(b) of the EIR to withhold some information – specifically legal advice.
25. Given the request specifically seeks legal advice, the Commissioner considers it highly likely that any relevant information the public authority held would be covered by regulation 12(5)(b) of the EIR. The public interest is only likely to favour disclosure of such information in rare circumstances – which don't appear to exist here.
26. The Commissioner is therefore of the view that, taking into account all the circumstances, the request was manifestly unreasonable and thus regulation 12(4)(b) of the EIR is engaged.

Public interest test

27. The Commissioner recognises that there is always a general public interest in accountability and transparency – particularly in planning matters, which frequently cause friction between neighbours.
28. However in this case, the Commissioner notes that the planning application in question relates to converting the use of an existing building in a relatively rural area. Any impact the public authority's decision would have on the relatively small number of neighbours would necessarily be limited. Therefore any public interest in disclosure is similarly limited.
29. By contrast, the Commissioner considers that there is a strong public interest in protecting public authorities from having to deal with manifestly unreasonable requests that require an unreasonable diversion of resources away from other services.
30. In the Commissioner's view any public interest in transparency is adequately met by the availability of documents on the public authority's planning portal. Dealing with the request would not advance that interest significantly and therefore the public interest favours maintaining the exception.

Procedural matters

31. When a public authority relies on regulation 12(4)(b) of the EIR to refuse a request it must provide advice and assistance to the requester to help them to narrow their request such that it no longer imposes a manifestly unreasonable burden. Alternatively, it must inform the requester that no meaningful advice and assistance can be provided – this will only usually be the case where the request is exceptionally broad-ranging.
32. When it initially refused the request, the public authority told the complainant that:

“You may wish to reduce the scope of your request bringing it within an answerable scope, perhaps by identifying specific items associated to the application, that are not already in the public domain, that you wish to have visibility of.”
33. Whilst a public authority is not required to lavish ingenuity on thinking up ways in which a request can be refined, it should at least give a requester some indication of how the request could be refined or the parts which would or would not be particularly burdensome. Simply telling a requester that they should try requesting less information is not providing advice and assistance.
34. The public authority has rightly pointed out that it is not obliged to comply with the less burdensome elements if the request as a whole is manifestly unreasonable. However, one way of fulfilling its advice and assistance obligations would have been to simply identify which elements it could have dealt with. This would have given the complainant the opportunity to restrict his request to only those elements or to have added additional parameters to the burdensome elements to limit the burden they would impose.
35. The public authority must now provide advice and assistance to the complainant to help him refine his request such that it no longer imposes a manifestly unreasonable burden.

Right of appeal

36. 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

37. 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.
38. 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

Roger Cawthorne
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
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