

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 17 April 2024

Public Authority: Oldham Council

Address: Civic Centre

West Street

Oldham

OL1 1UT

Decision (including any steps ordered)

1. The complainant requested information about the formulation of Oldham's Town Investment Plan. Oldham Council (the Council) provided some information and stated that other information was available online. Following an internal review the Council stated that further information relevant to the request had been identified but it was considered exempt under regulations 12(4)(e) (internal communications) and 12(5)(f) (interests of the provider), 12(5)(e) (confidentiality of commercial or industrial information) and 13 (personal data) of the EIR. During the course of the Commissioner's investigation the Council stated that it was now relying on regulation 12(4)(b) (manifestly unreasonable) of the EIR on the grounds that to comply with the request would incur an unreasonable burden on its resources.
2. The Commissioner's decision is that the Council is entitled to rely on regulation 12(4)(b) (manifestly unreasonable) to refuse to provide the requested information. However, he finds that the Council failed to provide reasonable advice and assistance and therefore failed to meet its obligations under regulation 9 of the EIR. The Commissioner also finds that the Council breached regulation 11 of the EIR by failing to complete its internal review within 40 working days.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with advice and assistance to help them submit a less burdensome request.

4. The Council must take these steps within 30 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 1 September 2023, the complainant wrote to the Council and requested information in the following terms:

“Please provide details of when the initial conversations regarding the formulation of Oldham's Town Investment Plan took place.

Who was involved in those discussions and who had knowledge of the plans?

Also please provide copies of correspondence (written, email, text and any other media communication) and minutes of meetings (including informal contemporaneous notes) between all parties involved in the formulation of Oldham's Town Investment Plan”.

6. The Council responded on 29 September 2023 and provided information relating to parts one and two of the request. The Council also confirmed that minutes of all public meetings of the Oldham Town Deal Board, (renamed Oldham Town Centre Board) in November 2021, were publicly available and provided the relevant link.
7. On 29 September 2023 the complainant wrote back to the Council and stated that it had failed to provide one item of the request – namely copies of correspondence and any notes between all parties involved.
8. The Council provided the outcome of its internal review on 12 January 2024. It confirmed that it had located additional information relevant to the request but it considered the information to be exempt under regulations 12(4)(e), 12(5)(f), 12(5)(e) and 13 of the EIR.

Scope of the case

9. The complainant initially contacted the Commissioner on 18 November 2023 regarding the delay in the Council providing the outcome of its internal review. They contacted the Commissioner again on 6 February 2024 following receipt of the internal review response to confirm they were dissatisfied with the Council’s handling of the request. The complainant stated that they considered there was a public interest in

the information which the Council had withheld under various exceptions being disclosed.

10. During the course of the Commissioner's investigation, the Council stated that it had undertaken further searches to identify the information held relevant to the request and as a result of those searches it was now relying on regulation 12(4)(b) to refuse the request due to the amount of time it would take to comply with the request.
11. The scope of this case, and the following analysis, is to determine whether the Council is entitled to rely on regulation 12(4)(b) of the EIR to refuse to provide the withheld information.

Reasons for decision

Regulation 12(4)(b) – manifestly unreasonable requests

12. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose environmental information to the extent that the request for information is manifestly unreasonable.
13. There is no definition of 'manifestly unreasonable' under the EIR, but the Commissioner's opinion is that 'manifestly' implies that a request should be obviously or clearly unreasonable for a public authority to respond to in any other way than applying this exception.
14. In the Commissioner's view, the key question for public authorities to consider when determining if a request is manifestly unreasonable is whether the value and purpose of the request justifies the burden that would be placed upon the authority in complying with it.
15. The Freedom of Information and Data Protection (Appropriate Limit and Fees) ("the Fees Regulations") sets out an appropriate limit for responding to requests for information under the Freedom of Information Act 2000 (FOIA). The limit for local authorities, such as the Council, is £450, calculated at £25 per hour. This applies a time limit of 18 hours. Where the authority estimates that responding to a request would exceed this limit, it is not under a duty to respond to the request.
16. Although there is no equivalent limit within the EIR, the Commissioner considers that public authorities may use equivalent figures as an indication of what Parliament considers to be an unreasonable burden, when responding to EIR requests. However, the public authority must balance the estimated costs against the public value of the information which would be disclosed, before concluding whether the exception is applicable.

17. Under the Regulations, in estimating the time and burden involved in responding to a request, a public authority may take account of the time it would take to:
 - determine whether it holds the information;
 - locate that information or a document which may contain the information;
 - retrieve the information or a document containing it; and
 - extract the information from a document containing it.
18. Furthermore, unlike FOIA, under the EIR public authorities are entitled to include the time taken to consider the application of exceptions when calculating the cost of compliance with an EIR request.

The Council's position

19. The Council advised the Commissioner that following receipt of his investigation letter it considered the range of the requested information. As such, in addition to considering the information it had already identified, further searches were undertaken on its exchange server to establish whether any additional information relevant to the request was held.
20. The Council advised that when it considered the date range for the additional searches it used the date period from June 2019, when work started on considering formulation of the Town Investment Plan (TIP), to December 2020 when the TIP was completed. The Council advised that the search terms used for these searches were "Town Investment Plan" and "TIP"- which the plan was commonly referred to. These searches resulted in a significant number of emails being identified as potentially falling within the scope of the request:
 - 12,039 emails identified using the search term "Town Investment Plan".
 - 103,231 emails identified using the search term "TIP".
21. The Council explained that each email would need to be manually reviewed to determine whether it falls within the scope of the request. If it is found to be relevant to the request it would then need to be considered for disclosure to identify whether any other exceptions were applicable.
22. Based on the number of emails identified, the Council contends that the work required to comply with the request would represent a significant burden on its resources and as such it was now seeking to rely on

regulation 12(4)(b) of the EIR. The Council stated that even if it were to only take one minute to review each email (and any possible attachments), it would take over 200 hours to consider email items containing the term "Town Investment Plan" and around 1,720 hours to review for those containing the term "TIP", bringing the total estimate to nearly 2,000 hours.

The Commissioner's position

23. The Commissioner notes that the request is quite broad in that it is asking for copies of all correspondence, including emails, texts and any other media communications including contemporaneous notes between all parties concerning the formulation of Oldham's Town Investment Plan. The Commissioner also notes that the subject matter appears to have been under consideration for a significant amount of time (from June 2019 to December 2020).
24. The Commissioner notes the large number of email results in respect of the searches undertaken using the term "TIP". He considers that this will include emails that have the word "tip" in them, or any other word containing "tip", eg stipulate, multiple. As such, it is likely that some emails could be excluded as being relevant to the request fairly quickly. However, as the Council has confirmed that the Town Investment Plan was commonly shortened to "TIP" the Commissioner accepts that it would be necessary to review all email results from the searches undertaken.
25. The Commissioner accepts that the Council would need to manually review each email to both determine whether it falls within the scope of the request, and then to go on to consider whether any other exceptions applied to any of the information caught by the request and redact any exempt information. The Commissioner notes that in its internal review the Council confirmed it was relying on regulations 12(4)(e), 12(5)(f), 12(5)(e) and 13 in relation to the information which had been identified at that stage.
26. Based on an estimate of 1 minute per email the Commissioner accepts that it would take nearly 2,000 hours to comply with the request (12,039 + 103,231 emails @ 1 minute). The Commissioner notes that even if the Council were to only include emails which contain "Town Investment Plan" in full it would take over 200 hours to review each email. The Commissioner also notes that this estimate does not include any other searches which may be necessary to identify other forms of information relevant to the request, for example, texts, contemporaneous notes or written communications.
27. In light of the above the Commissioner is satisfied that complying with the request would place a disproportionate burden on the Council, both

in terms of cost and resources. Therefore, the Commissioner is satisfied that the request is manifestly unreasonable and so regulation 12(4)(b) is engaged. The Commissioner will now go on to consider the public interest test.

Public interest test

28. In its internal review response the Council acknowledged that there is a public interest in it being transparent about "future town funds information". However, given the significant burden that compliance with this request would place on the Council, and in light of the information which is already publicly available about the Town Investment Plan, the Council considers that the public interest in this case favours maintaining the exception.
29. The Commissioner recognises that the central public interest in the exception being maintained relates to preserving the Council's resources. It is not in the public interest to require an authority to respond to a disproportionate request which places a significant burden on it, but which would not provide information of significant value to the public.
30. Even where a request would provide information of value to the public, it is not in the public interest to require the authority to fully respond to the request where it would cause such a burden on the authority that this would significantly affect its ability to carry out its other functions.
31. The Commissioner acknowledges that there is a public interest in matters relating to the Town Investment Plan as it involves a significant amount of public money. However, taking into consideration the significant burden that responding to the request would place on the Council, the Commissioner considers that the public interest in the maintenance of the exception outweighs the public interest in disclosure.
32. 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. As stated in the Upper Tribunal decision *Vesco v Information Commissioner* (SGIA/44/2019):

"If application of the first two stages has not resulted in disclosure, a public authority should go on to consider the presumption in favour of disclosure..." and "the presumption serves two purposes: (1) to provide the default position in the event that the interests are equally balanced and (2) to inform any decision that may be taken under the regulations" (paragraph 19).
33. As covered above, in this case the Commissioner's view is that the balance of the public interest 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. Therefore, the Council is not required to provide the requested information.

Procedural matters

Regulation 9 – advice and assistance

34. Regulation 9(1) of the EIR says that a public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.
35. As stated in this notice, the Council did not apply regulation 12(4)(b) to the request until after the Commissioner commenced his investigation. As such, to date, the Council has not provided any advice or assistance to the complainant on whether it would be possible to refine or narrow the request in order to reduce the burden. For example, it may be possible to reduce the burden by narrowing the timeframe, or the parties involved in communications, or to a particular issue associated with the Town Investment Plan. If it is not possible to refine the request in any meaningful way, the Council should explain why this is the case to the complainant.

Regulation 11 – Representations and reconsideration

36. Regulation 11(1) says that an applicant may make representations to a public authority in relation to their request for environmental information, if it appears to the applicant that the authority has failed to comply with a requirement of the Regulations in relation to the request.
37. Regulation 11(3) says that the public authority shall consider the representations and decide if it has complied with the requirement. Regulation 11(4) says the public authority shall notify the applicant of its decision as soon as possible and no later than 40 working days after the date of receipt of the representations.
38. In this case the complainant requested an internal review on 29 September 2023 and the Council did not provide the outcome of its internal review until 12 January 2024. The Commissioner therefore finds that by failing to carry out an internal review within the statutory time limit of 40 working days, the Council breached regulation 11 of the EIR.

Right of appeal

39. 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

40. 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.
41. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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