

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 15 May 2024

**Public Authority:** Thorne Moorends Town Council  
**Address:** Assembly Rooms  
Fieldside  
Thorne  
Doncaster  
DN8 4AE

#### **Decision (including any steps ordered)**

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1. The complainant has requested information from the Thorne Moorends Town Council (the Council) in relation to its neighbourhood plan and in particular a specific appendix mentioned. The Council initially dealt with the request under FOIA and cited section 14 (vexatious).
2. The Commissioner's decision is that the Council should have considered the request under the Environmental Information Regulations 2004 (EIR). The Commissioner also finds that the relevant exception, 12(4)(b) (manifestly unreasonable) is engaged.
3. The Council is entitled to rely on regulation 12(4)(b) of the EIR to withhold the information in scope of the request and that the public interest favours maintaining the exception.
4. The Commissioner does not require the Council to take any steps as a result of this decision.

## Request and response

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5. The complainant submitted a number of requests to the Council around the time of the specific request:

"I request by use of FOI Act 2000 of today's date i.e. 16th October 2023 the statement named as Appendix 1 that is attached to the Thorne and Moorends Neighbourhood Plan Basic Conditions Statement dated 29th March 2017."

6. The Council responded on 20 October 2023 and answered three requests, it attached a copy of the basic conditions statement in response to this specific request.

7. The complainant responded on the same day and stated that:

"My request dated 16th October 2023 by use of the FOI Act 2000 was for only Appendix 1 of the Basic Needs Statement dated 29th March 2017 see below for reference to Appendix 1 :-

6..2 A screening opinion was issued by Doncaster MBC on date (attached as appendix 1 to this statement)

You have sent me an attachment which is a copy of the Basic Conditions Statement which is without the attached Appendix 1.

I therefore repeat my request for Appendix 1 of the Thorne and Moorends Neighbourhood Plan Basic Conditions Statement which I first made on the 16th October 2023 by use of FOI Act 2000."

8. The complainant followed up their request on 14 November 2023 as they had not received a response from the Council and at the same time requested an internal review of the handling of their request.
9. The Council responded on 20 November 2023 stating that requests relating to the neighbourhood plan were deemed manifestly unreasonable and a burden to the Council. Following an internal review on 28 November 2023 it maintained its position.

## Is the information environmental?

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### Regulations 2(1)-definition of environmental information

10. Regulation 2(1) of the EIR provides the following definition of environmental information:

"...any information in written, visual, aural, electronic or any other material form on-

(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape, and natural sites including wetlands, coastal and marine areas, biological diversity, and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation, or waste, including radioactive waste, emissions, discharges, and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements..."

11. It is important to ensure that requests for information are handled under the correct access regime. This is particularly important when refusing to provide information, since the reasons why information can be withheld under FOIA (the exemptions) are different from the reasons why information can be withheld under the EIR (the exceptions). In addition, there are some procedural differences affecting how requests should be handled.
12. The Commissioner has produced guidance to assist public authorities and applicants in identifying environmental information<sup>1</sup>. The Commissioner's well-established view is that public authorities should adopt a broad interpretation of environmental information, in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact.
13. In relation to the interpretation of regulation 2(1)(c) of the EIR, the Commissioner's guidance states "the regulation gives 'such as' examples of measures or administrative measures; policies, legislation, plans, programmes, and environmental agreements. This covers a broad range and includes the steps you take to ensure something happens and the

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<sup>1</sup> [Regulation 2\(1\) - What is environmental information? | ICO](#)

methods, processes, or instruments you use to implement the measure.”<sup>2</sup>

14. The Commissioner’s view is therefore that information pertaining to the neighbourhood plan would include information on measures and/or activities which are likely to affect the elements and factors of the environment.
15. The information requested would therefore fall within the definition at regulation 2(1)(c) of the EIR and the request should have been considered under the EIR.

## **Reasons for decision**

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

16. Regulation 12(4)(b) states that a public authority can refuse to disclose information in response to any request that is manifestly unreasonable.
17. The Council is relying on the grounds of burden to refuse the request.

### **The Complainant’s position**

18. The complainant considers the Council should hold information within scope of their request and that the Council inappropriately refused it.
19. The complainant argued that their request of 16 October 2023 was clear and as it was not provided, they had to repeat that specific FOI request and make a complaint on 14 November 2023.
20. They further argued information requests on 11 October 2023 were responded to and both responses were in relation to the Neighbourhood Plan, but the Council's responses were both negative and lacked any detailed and credible information.
21. As part of their submissions to the Commissioner, the complainant stated: “I believe that Thorne-Moorends Town Council does hold the attachment i.e. Appendix 1 that I requested on the 16th October 2023 by use of FOI request being an integral part of the Thorne-Moorends Neighbourhood: Basic Conditions Statement 29th March 2017 which must hold vital evidence relating to the EU Obligations. I believe that

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<sup>2</sup> [Regulation 2\(1\) - What is environmental information? | ICO](#)

Thorne-Moorends Town Council is withholding this specific information without just cause.

The Council does not refer to my specific request in its decision which was for Appendix 1 and made on the 16th October 2023 and this is grossly unfair."

### **The Council's position**

22. In its submissions to the Commissioner, the Council stated that:  
"Ongoing requests regarding the same matter have been received regularly over a number of years. The Council is a small local authority and has only one individual member of staff to answer requests. Manifestly unreasonable and repeated requests cause a strain on resources and hinders the deliverance of other mainstream services and the answering of other legitimate requests. The Council views the Freedom of Information Act as an invaluable piece of legislation and feels that repetitive and manifestly unreasonable requests of this nature may have the potential to damage the reputation of the legislation itself."
23. The Council further explained that it considered the burden of the requests on the authority and its staff. It determined that they were causing a disproportionate and unjustified level of disruption, irritation or distress, and the Council recognised its duties and aims to protect its staff and resources.
24. It was also explained that the Council has a large asset base to manage, across areas home to around 18,500 residents, and only have three members of administrative staff and one officer responsible for handling information requests.
25. The Commissioner requested clarification from the Council around the specific request for Appendix 1. The Council acknowledged that it had supplied the complainant with all information it could locate relating to the request, however, it stated that it did not hold a copy of the appendix itself and had carried out relevant enquiries to confirm this.

### **The Commissioner's position**

26. The Commissioner is aware that the Council has responded to numerous requests regarding the neighbourhood plan from the complainant over a number of years but had only recently determined them to be manifestly unreasonable as outlined above.
27. The Commissioner is satisfied that responding to the requests would create an unreasonable burden upon the Council and hence the requests

were manifestly unreasonable. Therefore regulation 12(4)(b) is engaged.

### **Public interest test**

28. Regulation 12(4)(b) is subject to the public interest test. This means that, even though the Commissioner accepts that the request was manifestly unreasonable and regulation 12(4)(b) was engaged, the Commissioner must consider whether the public interest in the maintenance of the exception outweighs the public interest in disclosure of the information.
29. The Council has confirmed that it considered that compiling further responses to these requests would be a significant diversion of resources which would not be in the public interest as it may disrupt other decision making or other workloads. It is not in the public interest to divert officer's attention from their core work in order that it respond to a request made by one individual which may have limited wider public interest.
30. The Commissioner accepts that there is a general public interest in the issues and that local residents will have their own interest in knowing how the Council is carrying out its duties and using its resources to the greatest effect for the community as a whole. However, having considered both the complainant's and Council's arguments the Commissioner is not convinced that providing further information would substantially add to any public interest outside of that of the complainant and local residents.
31. Therefore, taking into consideration the significant burden that responding further would place on the Council, the Commissioner considers that the public interest in the maintenance of the exception outweighs the public interest in disclosure.

### **Regulation 9 – Advice and assistance**

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32. Regulation 9(1) states that a public authority has a duty to provide advice and assistance to a requestor, so far as it would be reasonable to expect the authority to do so.
33. As stated in the Commissioner's [guidance](#), in cases where a public authority refuses a request under regulation 12(4)(b) as manifestly unreasonable because of burden or cost, the Commissioner normally expects it to provide the requestor with reasonable advice and assistance to help them submit a less burdensome request.

34. In this case, the Commissioner considers that given the specific wording of the requests it would be difficult to refine them. Therefore, the Commissioner has concluded that it would be difficult for the Council to suggest how the requests could be refined in such a way that it would be able to provide the information requested.
35. In light of the above, the Commissioner finds that the Council has complied with its obligations under regulation 9(1) of the EIR in its handling of the request.

### **Other matters**

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36. The Council's responses were unclear and caused confusion for both the complainant and the Commissioner during his investigation.
37. The Commissioner notes that the complainant considers the Council should hold information within the scope of the request as it is clearly mentioned within the document they had received. However, it is not within the Commissioner's remit to determine what information should be held, but only to consider if a public authority has complied with the legislation regarding the information it does hold.
38. The Commissioner considers that if the Council had been more open and direct from the start, the complainant may have understood at an early stage that the Council did not hold the information requested.
39. Although FOIA/EIR does not expect explanations to be provided, there is nothing to prevent it in appropriate circumstances. This is just such a case where if the Council's response at the time had stated that no information was held for the specific request, it is possible the case would not have escalated further.

## Right of appeal

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40. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

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

**Susan Duffy**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**