

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

### **Decision notice**

**Date:** 16 May 2024

**Public Authority:** Luton Borough Council  
**Address:** Town Hall  
Luton  
LU1 2BQ

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

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1. The complainant has requested information about a communications mast near their home. Luton Borough Council ("the Council") refused to comply with the request on the basis that it was vexatious under regulation 12(4)(b) (manifestly unreasonable requests) of the EIR.
2. The Commissioner's decision is that the Council is entitled to refuse to comply with the request under regulation 12(4)(b).
3. The Commissioner does not require further steps.

#### **Request and response**

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4. On 7 November 2023, the complainant wrote to the Council and requested information in the following terms:

"I have had a meeting with my solicitor and he has asked me to request correspondence between Arqiva and yourselves regarding site visits by LBC employees to the telecommunications site, how this situation is going to be rectified and a time frame for the rectification works, this will help him build up a sequence of events. If you are not willing to share this information, could you please advise me at your earliest convenience."

5. The Council responded on 11 December 2023. It refused to comply with the request under regulation 12(4)(b).
6. The Council provided an internal review outcome on 22 December 2023. It maintained its original response.

## Reasons for decision

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### Regulation 12(4)(b) – Manifestly unreasonable requests

7. Regulation 12(4)(b) of the EIR states that:

“For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that—

(b) the request for information is manifestly unreasonable;”

8. The Commissioner has issued public guidance<sup>1</sup> on the application of regulation 12(4)(b). This guidance contains the Commissioner’s definition of the regulation, which is taken to apply in circumstances where either the request is 1) vexatious, or 2) where the cost of compliance with the request would be too great. If engaged, the exception is subject to a public interest test.
9. In this case, the Council considers that circumstance 1) is applicable.
10. The Commissioner recognises that, on occasion, there can be no material difference between a request that is vexatious under section 14(1) of the Freedom of Information Act 2000 (“the FOIA”) and a request that is manifestly unreasonable on vexatious grounds under the EIR. The Commissioner has therefore considered the extent to which the request could be considered as vexatious.
11. The Commissioner has published guidance on vexatious requests<sup>2</sup>. As discussed in the Commissioner’s guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. Sometimes, it will be obvious when requests are

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<sup>1</sup> <https://ico.org.uk/for-organisations/guide-to-the-environmental-information-regulations/refusing-a-request/#when-can-we-refuse-a-request-for-environmental-information-3>

<sup>2</sup> <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/section-14-dealing-with-vexatious-requests/>

vexatious, but sometimes it may not. In such cases, it should be considered whether the request would be likely to cause a disproportionate or unjustified level of disruption, irritation or distress to the public authority. This negative impact must then be considered against the purpose and public value of the request. A public authority can also consider the context of the request and the history of its relationship with the requester when this is relevant.

12. While section 14(1) of the FOIA effectively removes the duty to comply with a request, regulation 12(4)(b) of the EIR only provides an exception. As such the EIR explicitly requires a public authority to apply a public interest test (in accordance with regulation 12(1)(b)) before deciding whether to maintain the exception. The Commissioner accepts that public interest factors, such as proportionality and the value of the request, will have already been considered by a public authority in deciding whether to engage the exception, and that a public authority is likely to be able to 'carry through' the relevant considerations into the public interest test. However, regulation 12(2) of the EIR specifically states that a public authority must apply a presumption in favour of disclosure. In effect, this means that the exception can only be maintained if the public interest in refusing the request outweighs the public interest in responding.

### The Commissioner's conclusion

13. The Council has informed the Commissioner that it has refused to comply with this request on the same basis as an earlier request (made on 13 September 2023), to which the Council also applied regulation 12(4)(b).
14. The Commissioner has recently considered the Council's handling of the earlier request, and found that the Council was entitled to rely upon regulation 12(4)(b). The reasoning for this is contained in decision notice IC-262825-T3Q3<sup>3</sup>, and the Commissioner will not replicate it here.
15. Having considered the content of the request in this case, and the detail contained within the Council's response and internal review outcome, the Commissioner is satisfied that it relates to the same substantive matter as the earlier request. That is, a communications mast near the complainant's home.

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<sup>3</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2024/4028912/ic-262825-t3q3.pdf>

16. The factor that must therefore be considered by the Commissioner is whether the circumstances present at the date of this request are substantially different to those present at the date of the earlier request.
17. In his earlier decision the Commissioner noted the long standing nature of the complainant's correspondence, starting in at least 2003, and the broadness of matters that had been raised. The Commissioner noted that "This has included concerns about land contamination, which also resulted in a complaint to the LGSCO that has not upheld. In relation to the current concern of noise, the Council has found there to be no statutory noise nuisance, but is currently considering whether there has been a breach of planning permission by the site operator."
18. As of the date of the request in this case, the Commissioner understands that a breach of planning permission by the site operator had been found. However, the Commissioner also understands that the Council has otherwise communicated with the complainant about this outside the terms of the EIR, advising in its response to the request that it had provided "an email update on 24<sup>th</sup> October 2023 setting out the current position of the matter and communicating a 3 point plan to rectify the outstanding breach by Arqiva, this email was sent by Council staff." In the same correspondence, the Commissioner also notes that the Council advised the complainant that "you have already received a copy of legal correspondence sent by the Council to Arqiva".
19. It is therefore evident to the Commissioner that the Council is handling this matter as a planning enforcement action, and has contacted the complainant in respect of it. The Commissioner perceives that this is the proper process for the matter to be resolved. It is not the purpose of the EIR to replace that process, and, similar to his finding in decision notice IC-262825-T3Q3, there is no evidence available to the Commissioner that suggests there has been a failure by the Council to consider the complainant's concern. Indeed, that planning enforcement action is being taken, suggests the opposite.
20. Having considered this, the Commissioner does not perceive that the circumstances present at the date of this request are substantially different to those at the earlier request.
21. In respect of the public interest test, there also remains no compelling evidence, such as a failure by the Council to consider the complainant's concern, which would indicate to the Commissioner that there is an equal or greater public interest in the request being complied with.
22. The Commissioner has therefore concluded that the Council's application of regulation 12(4)(b) of the EIR was correct.

## **Right of appeal**

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23. 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)

24. 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.
25. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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