

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 21 September 2022

Public Authority: Bristol City Council

Address: City Hall
PO Box 3399
Bristol
BS1 9NE

Decision (including any steps ordered)

1. The complainant requested information from Bristol City Council ("the Council") relating to complaints about low frequency noise. The Council refused to provide the requested information citing regulation 12(4)(c) (requests formulated in too general a manner) and regulation 12(4)(b) (manifestly unreasonable) of the EIR.
2. The Commissioner's decision is that the Council is not entitled to rely on regulation 12(4)(c) of the EIR to refuse to provide the requested information. However, the Council is entitled to rely on regulation 12(4)(b) of the EIR to refuse to provide the requested information.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 31 January 2022, the complainant wrote to the Council and requested information in the following terms:

"I would like information on how many people reported a low frequency noise in recent years, say the last 10?
I am actively trying to find a source and this is the data I am missing."
5. The Council responded on 7 February 2022 and refused to provide the requested information citing section 12 (cost limit) of the FOIA.
6. On 7 February 2022 the complainant requested an internal review.
7. Following an internal review the Council wrote to the complainant on 14 February 2022. The Council revised its position stating that it should have handled the request under the EIR rather than the FOIA. It refused to provide the requested information citing regulation 12(4)(c) (requests formulated in too general a manner) and regulation 12(4)(b) (manifestly unreasonable) of the EIR.

Scope of the case

8. The complainant contacted the Commissioner 13 March 2022 to complain about the way their request for information had been handled.
9. The scope of this case and the following analysis is to determine if the Council has correctly cited regulation 12(4)(c) and 12(4)(b) of the EIR in response to the request.

Reasons for decision

Regulation 12(4)(c) – requests formulated in too general a manner

10. Regulation 12(4)(c) of the EIR states that a public authority may refuse to disclose information to the extent that the request for information is formulated in too general a manner and the public authority has complied with regulation 9.
11. The Commissioner interprets 'too general a manner' to mean that the request is either ambiguous and has more than one possible interpretation or, that the request is unclear and not specific enough for a public authority to identify the information being requested.

The Council's position

12. In its internal review response, the Council stated that it considers the request to be too general and therefore, complying with the request would place a significant and detrimental burden on Council resources. The Council stated that in order to provide the requested information, it would have to review a large amount of information which would divert resources away from other core duties meaning that the Council could not provide the service required by Bristol residents.
13. The Council stated that in its initial response to the request, it suggested to the complainant that they could reduce the scope of their request by reducing the time period of their request or by limiting their request to a particular ward of Bristol. As the complainant has not reduced the scope of their request, the Council does not consider that it is obliged to provide the requested information.

The Commissioner's position

14. The Commissioner notes that the Council's main reason for applying regulation 12(4)(c) to the request is that it considers the request to be too broad and therefore burdensome for the Council. The Council has not applied regulation 12(4)(c) on the basis that the request is unclear or ambiguous.
15. The Commissioner considers that the purpose of regulation 12(4)(c) is to enable a public authority to refuse to comply with a request if that request is too vague, unclear or non-specific rather than enabling a public authority to refuse to comply with a request if it relates to an extensive amount of information or is too broad.
16. As the Council had not applied regulation 12(4)(c) to the request on the basis that the request is unclear, the Commissioner does not consider the Council to have correctly applied regulation 12(4)(c) to the request and therefore, regulation 12(4)(c) is not engaged.
17. The Commissioner will now go on to consider whether the Council is entitled to rely on regulation 12(4)(b) of the EIR to refuse to provide the requested information.

Regulation 12(4)(b) – manifestly unreasonable

18. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable.
19. The Commissioner considers that a request can be manifestly unreasonable either if the request is vexatious, or where compliance

with the request would incur a manifestly unreasonable burden on the public authority both in terms of costs and the diversion of resources.

20. The Council has relied upon the latter interpretation of regulation 12(4)(b), that it considers the amount of work required to comply with this request in full would bring about a manifestly unreasonable burden.
21. Under FOIA, the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') specify an upper limit for the amount of work required beyond which a public authority is not obliged to comply with a request. This is set at £450 for public authorities such as the Council.
22. The Fees Regulations state that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it;
 - and extracting the information from a document containing it.
23. The EIR differ from FOIA in that under the EIR there is no upper cost limit set for the amount of work required by a public authority to respond to a request.
24. While the Fees Regulations relate specifically to FOIA, the Commissioner considers that they provide a useful point of reference where the reason for citing regulation 12(4)(b) of the EIR is the time and costs that compliance with a request would expend. However, the Fees Regulations are not the determining factor in assessing whether the exception applies.
25. The Commissioner's guidance on regulation 12(4)(b)¹ states that public authorities may be required to accept a greater burden in providing environmental information than other information.
26. Regulation 12(4)(b) sets a robust test for a public authority to pass before it is no longer under a duty to respond. The test set by the EIR is

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

that the request is “manifestly unreasonable”, rather than simply being “unreasonable”. The Commissioner considers that the term “manifestly” means that there must be an obvious or clear quality to the identified unreasonableness.

27. Given the high burden referred to within paragraph 22, the Commissioner expects a public authority to provide both a detailed explanation and quantifiable evidence to justify why complying with a request would impose such an unreasonable burden on it, and therefore why regulation 12(4)(b) is engaged.
28. Where a public authority has shown that Regulation 12(4)(b) is engaged, Regulation 12(1)(b) requires that a public interest test is carried out to determine whether the arguments in favour of maintaining the exception outweigh those in favour of disclosing the requested information. A public authority may still be required to comply with a manifestly unreasonable request if there is a strong public value in doing so.

The Council's position

29. In its initial response to the request, the Council explained that information relating to noise complaints are stored within the Council's case management system. The Council explained that the Council's case management system does not have the capacity to search for complaints which relate to low frequency noise. Therefore, in order to provide the requested information, the Council would have to manually review all noise complaints received within the last 10 years to identify complaints which relate to low frequency noise.
30. The Council explained that it has conducted a search for noise complaints received within the last 10 years. This search identified 21,884 complaints which would need to be manually reviewed to determine whether they fall within the scope of the request. The Council estimates that it would take approximately 2 minutes to review each noise complaint for information within the scope of the request. Therefore, in total, the Council considers that it would take 729.46 hours to provide the requested information (21,884 noise complaints x 2 minutes = 729.46 hours).

The Commissioner's position

31. The Commissioner considers the Council's estimate of 729.46 hours to provide the requested information to be reasonable. Even if the cost estimate provided by the Council was halved it would still be far in excess of the cost limit specified in the Fees Regulations.

32. The Commissioner's decision is that the request is manifestly unreasonable and therefore, regulation 12(4)(b) is engaged.

Public interest test

33. Regulation 12(4)(b) is subject to the public interest test. This means that, when the exception is engaged, public authorities also have to consider whether, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
34. In its internal review response, the Council outlined its arguments in favour of disclosing the requested information. The Council stated that there is some public interest in understanding harmful noise levels within Bristol. There is also some public interest in the transparency and accountability of the Council.
35. The Council also outlined its arguments in favour of maintaining its reliance on regulation 12(4)(b) of the EIR. The Council stated that as the scope of the request is very broad, complying with the request would place a burden on the Council as it would take a large amount of time to provide the requested information. As a result of this, staff would not be able to conduct core duties or deliver its other services.
36. Furthermore, the Council recognises that the requested information is of value to the complainant. However, the Council does not consider the requested information to be of strong interest to the wider public. Therefore, on balance the Council considers that the public interest in maintaining the exception outweighs the public interest in disclosing the withheld information.
37. The Commissioner agrees with the Council that the public interest favours maintaining regulation 12(4)(b) of the EIR. The financial and time burden that disclosing the withheld information would cause to the Council is substantial. In the Commissioner's view that burden would be disproportionate and not in the public interest.
38. The Commissioner's conclusion is that the public interest in the maintenance of the exception provided by regulation 12(4)(b) outweighs the public interest in disclosure of the withheld information. The Council is not, therefore, required to disclose this information.
39. 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).

40. As covered 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 – advice and assistance

41. 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.
42. In its initial response to the request, the Council advised the complainant that they could refine their request to reduce the cost and burden of the request. The Council suggested that they could reduce the scope of their request by reducing the time period of their request or by limiting their request to a particular ward of Bristol.
43. The Commissioner considers that this was an appropriate response in the circumstances. The Commissioner decision is that the Council met its obligations under regulation 9(1) of the EIR.

Right of appeal

44. 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

45. 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.
46. 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

Daniel Perry
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