

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 21 February 2023

Public Authority: Balderton Parish Council

Address: Balderton
Newark
Notts
NG24 3BD

Decision (including any steps ordered)

1. The complainant requested information relating to a water safety survey carried out in 2017. Balderton Parish Council (the "Council") has stated that the Council never received this request, and they only became aware of the request when the Commissioner supplied a copy of the letter to them. They have since advised the requester that a copy of the information can be supplied on receipt of a fee of £1.68 which included postage.
2. After several further exchanges of correspondence between the requester and the Council, the Council determined that the requests were considered to be taking up significant resources and cited regulation 12(4)(b) of the EIR to refuse to engage further on the issues raised.
3. The Commissioner determined that the Council had satisfied the original request for information and that due to further requests it received around the same or similar theme, the Council were entitled to engage regulation 12(4)(b) of the EIR to refuse the requests.
4. The Commissioner does not require any steps to be taken as a result of this decision notice.

Request and response

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

“Agenda item b(a) - During the discussions on this item, reference was made to the Water Safety Survey from 2017 but that document itself was not evidenced by the Council nor the YMCA.

As this document is referred to in other Parish Council Minutes & Records I would like to request a copy. I am happy to pay any charges.”

6. The Council responded on the 27 October 2022, after the Commissioner had supplied it with a copy of the requesters letter of 4 May 2022, they stated that a copy of the Water Survey of the Lake from 2017 could be supplied at a cost of £1.68 including postage. The Council went on to state that all information held by the Council referred to in the requests of 23 May & 13 June 2022 had been supplied and explanations given where information was not held, this was covered in their letters of 7 June, 12 July, 12 September, and 21 October 2022.
7. The complainant responded on 1 November and 5 December 2022 disputing the findings of the internal review pointing out that the Council had not cited which exemption(s) it relied on for their response.
8. On 29 November 2022, the Council responded stating that an unmanageable burden had been placed on the Council, and they had received 22 requests and numerous other enquiries associated with Balderton Lake. They confirmed their reliance on regulation 12(4)(b) on refusing to engage further with the requests under the EIR.

Scope of the case

9. The complainant contacted the Commissioner on 28 December 2022, to complain about the way their request for information had been handled.
10. The Commissioner considers the scope of his investigation is to determine if the Council has correctly engaged regulation 12(4)(b) of the EIR.

Reasons for decision

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

11. The Commissioner accepts that the requested information is environmental, and that the Council was right to handle the request under the EIR.
12. Under regulation 12(4)(b) of the EIR a public authority may refuse to disclose information to the extent that the request is manifestly unreasonable.
13. Unlike section 14(1) of FOIA, regulation 12(4)(b) is subject to the public interest test under regulation 12(1)(b).
14. The Council considers that the complainant's request is manifestly unreasonable because it is vexatious (rather than because the costs associated with complying with it are too great). Broadly, vexatiousness involves consideration of whether a request is likely to cause a disproportionate or unjustified level of disruption, irritation, or distress.
15. The EIR gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such, it is an important constitutional right. Therefore, engaging regulation 12(4)(b) has a high bar.
16. However, the Commissioner recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.
17. The Commissioner has referred to his own guidance¹ and the submissions provided to him by the Council in making his decision.
18. The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal (UT) in the leading case on section 14(1), *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013)

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

("Dransfield")² . Although the case was subsequently appealed to the Court of Appeal, the UT's general guidance was supported, and established the Commissioner's approach.

19. Dransfield established that the key question for a public authority to ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation, or distress.
20. The four broad themes considered by the Upper Tribunal in Dransfield were:
 - the burden (on the public authority and its staff);
 - the motive (of the requester);
 - the value or serious purpose (of the request); and
 - any harassment or distress (of and to staff).
21. However, the UT emphasised that these four broad themes are not a checklist and are not exhaustive. They stated:

"all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA" (paragraph 82).
22. The Commissioner has therefore considered whether the Council is entitled to rely on regulation 12(4)(b) (manifestly unreasonable) of the EIR to refuse to provide the requested information).

The Councils view

23. The Council has told the Commissioner that they are dealing with a number of requests from the requester and others around this particular issue, and that they considered they have been compliant as the information initially requested had been offered to the requester for a nominal charge to cover reprographic and postage charges.
24. They clarified to the requester within their internal review response, that they had received 22 requests relating to Balderton Lake as well as numerous emails, phone calls, and press enquiries which have created

² <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

an unmanageable burden on their small Parish Council, and recognised the public interest in the matter and have done it's best to deal with all enquiries and publish relevant information, but the additional work was unmanageable and caused stress and disruption to the Council.

25. The Council went on to explain that they had considered the Commissioner's guidance carefully and had reached the difficult decision to engage regulation 12(4)(b) of the EIR, in order to help prevent the further diversion of its resources as they believe it is the most reasonable course to take in this case.

The Complainants view

26. The complainant has said that the Council has not replied to their request nor have they supplied the requested information and stated:

"Had the requests detailed and referred to in my letters been considered vexatious, I think that any exemption would have been introduced long before now and before any Internal Review.

However, I note that The Council doesn't consider that my letter of 1 November 2022 is '*manifestly unreasonable in the time it would take the Parish Council to deal with it*', so I fail to understand why a refusal notice has been issued when my letter only sought to clarify issues in respect of the existing and outstanding requests, in the hope of resolving matters informally. My letter did not refer to a fresh request.

I note that you state that members of the public have made 22 information requests. I personally don't think that is a large and unreasonable amount considering that almost 4000 people signed a petition opposing proposals for water sports on Balderton Lake.

I don't know the details of all the 22 requests but The Council does seem to be avoiding disclosure of Environmental Information by combining similar requests received during the whole of '*this year*' with my letter of 1 November 2022 and thereby classing them as vexatious, when in fact they might be justifiable requests for information that The Council still hasn't published or made available.

If a Refusal Notice has been issued I have been advised that Regulation (11) applies because I don't see how I can be held responsible for these other requests as well as the '*numerous e-mails, phone calls, press enquiries, etc*' made by other individuals.

Balderton Parish Council has not been '*proactively*' publishing information in accordance with current legislation and I doubt that 22

information requests would have been made if The Council had published all the information that it is required to publish.

The Balderton Lake issue is a matter of public interest as you rightly acknowledge in your letter. If The Council has considered the Public Interest test correctly, I fail to understand why so much Environmental Information has still not been published and why it is still being withheld from the public at large."

The Commissioner's decision

27. The Commissioner has carefully considered the points made by the complainant and the Council.
28. The Commissioner appreciates that the complainant has concerns about the way their request was handled by the Council. However, the Commissioner considers that the Council's responses have adequately addressed these points.
29. During the Commissioner's investigation the Council has explained the reasons for a delay in its response to the initial request and offered the information to the complainant, all be it for a small fee, and provided an explanation for its approach. It is unfortunate that the Council did not convey this approach sooner and more clearly to the complainant, which may have helped them better understand what the Council has done to comply with their initial request.
30. The Commissioner accepts that the Council has offered to provide the information requested for a small fee and has dealt with subsequent enquires. The Commissioner considers the Council's response to the request to be reasonable.
31. The Commissioner's decision is that the request is manifestly unreasonable and therefore, regulation 12(4)(b) is engaged. The Commissioner will now go on to the consider the public interest test.
32. Whilst the Commissioner recognises that there is a general, and more so local public interest in the transparency and openness of the Council, he considers that complying with the requests would place a significant burden on the Council's limited resources. In the Commissioner's view that burden would be disproportionate and not in the public interest.
33. 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.

34. 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).

35. 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 by the Council in this case.

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: 0300 1234504
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

Joanna Marshall
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