

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 26 May 2023

Public Authority: Balderton Parish Council
Address: Balderton
Newark
Notts
NG24 3BD

Decision (including any steps ordered)

1. The complainant has requested information from Balderton Parish Council ("the Council") in relation to a proposal for boating to be allowed on Balderton Lake. The Council refused the request, citing regulation 12(4)(b) of the EIR.
2. The Commissioner's decision is that the Council is entitled to engage regulation 12(4)(b) of the EIR to refuse the request.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Request and response

4. On 1 November 2022, the complainant wrote to the Council and requested information in the following terms:

"Would you therefore please provide copies of all the documents and background papers which are referred to and highlighted in the following extracts from the Council's records?"

Please also include copies of all correspondence exchanged with the Council's solicitor in respect of this matter including the following:

- Cost estimates
- Invoices for the work carried by the solicitor
- Advice given in relation to the YMCA proposals, draft proposals and draft agreements
- Advice given with regards to the different docking designs.

In addition, please provide the contact details for the Council's solicitor and auditor."

5. The Council responded on 9 December 2022. It stated that it was withholding the information, citing regulation 12(4)(b) of the EIR – manifestly unreasonable.
6. The Council originally refused to provide an internal review. However, following communication with the Commissioner, an internal review was carried out.
7. Following an internal review the Council wrote to the complainant on 20 April 2023. It stated that it upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 11 February 2023, to complain about the way their request for information had been handled.
9. The Commissioner considers that the scope of the request is to determine if the Council has correctly engaged regulation 12(4)(b) of the EIR.
10. The Commissioner also notes the similar request for information that he has already made a decision on. ¹

Reasons for decision

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

¹ [ic-208499-y2g0.pdf \(ico.org.uk\)](#)

11. The Commissioner accepts that the requested information is environmental, and that the Council was right to handle the request under the EIR.
12. Unlike section 14(1) of FOIA, regulation 12(4)(b) is subject to the public interest test under regulation 12(1)(b).
13. 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.
14. 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.
15. 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.
16. The Commissioner has referred to his own guidance², and the information already provided by the Council when it responded to the requests.
17. 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) ("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.
18. 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.
19. 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

² <https://ico.org.uk/media/for-organisations/documents/1615/manifestly-unreasonable-requests.pdf>

- any harassment or distress (of and to staff)
20. 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)

21. 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 Council's view

22. The Council explained to the complainant that it has received 22 requests for information in relation to the lake. It advised that together, with numerous emails, phone calls and press enquiries, it has created an unmanageable burden for it, as it is a small parish council.
23. The Council advised that it recognises the local public interest in the matter and has to date done its very best to deal with all enquiries, and to publish relevant information on its website. However, it cannot continue to manage the additional work, along with the stress and disruption associated with it.
24. The Council explained that in reaching the decision to apply regulation 12(4)(b), it has considered the requests received from a number of different requestors; cumulatively the campaign to prevent kayaking and canoeing on Balderton Lake. It explained that the requests it is receiving are similar and, on occasion, other requestors have been copied in or mentioned.
25. The issue is cumulative to the amount of time that has been dedicated to the issue, and the associated requests for information, along with the other demands on the council staff in relation to the matter.
26. The Council also explained that continued allocation of resource to the matter is affecting other important work.

The complainant's view

27. The complainant has explained that their aim is to protect wildlife and are campaigning against a proposal to allow kayaking on Balderton Lake, but that they are having issues accessing and obtaining information held by the Council which refers to these matters.

28. The complainant has explained that the Council does not display Agendas or Minutes on the notice boards around the lake and that a specific meeting (in relation to the use of the lake) in 2017 had not been adequately publicised and, as such, many residents were not aware of the proposals until November 2021.
29. The complainant has advised that they have been able to obtain some information within the scope of their request, however, the remaining information the Council advised that it does not hold.
30. The complainant has also explained that the information that was provided, resulted in more questions being asked as they found a substantial amount of information had been omitted.
31. The complainant advised that they considered their requests to be clear, as the Council had not asked them for clarification.

The Commissioner's decision

32. The Commissioner has carefully considered the points made by the complainant and the Council.
33. The Commissioner acknowledges the complainant's concerns regarding how the Council has handled their requests. However, some of these concerns are outside the Commissioner's jurisdiction and will need to be addressed to the relevant party. The Commissioner can only look at how the Council has responded to the requests made under the EIR.
34. The Commissioner notes the complainant's concerns regarding the Council advising that the request on its own is not manifestly unreasonable. However, as there have been multiple other requests of a similar nature, he has to consider the overall amount of work that is being created for the Council by such requests.
35. The Commissioner accepts that receiving 22 requests on the same or similar topics would create a large amount of work for the small council, which would distract it from its normal duties. As such, he will now go on to consider whether the public interest in the requested information outweighs the exception applied.

Public interest test

36. The public interest test will consider, whether in the circumstances of this case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

37. There will always be some public interest in disclosure to promote transparency and accountability of public authorities, greater public awareness and understanding of environmental matters, a free exchange of views, and more effective public participation, all of which ultimately contribute to a better environment.
38. The Council explained that in reaching its decision, it considered the nature of the request and the wider value in the requested information being made publicly available, the importance of any underlying issue to which the request relates, and to the extent to which responding to the request would illuminate that issue; the size of the public authority and the resources available to it, including the extent to which it would be distracted from delivering other services; and the context in which the request is made, which may include the burden of responding to other requests on the same subject from the same requester.
39. The Council acknowledges that there will always be some public interest in disclosure to promote transparency and accountability of public authorities, greater public awareness and understand of environmental matters, a free exchange of views, and more effective public participation in environmental decision making, all of which ultimately contribute to a better environment.
40. The Council went on to explain that the public interest lies in protecting it from exposure to disproportionate burden, or to an unjustified level of distress and disruption in handling information requests. It advised that when a disproportionate amount of time is spent on one matter, this can get in the way of a public authorities ability to deliver its services or answering other requests.
41. The Council acknowledges that the particular issue is of importance to several residents. However, if it continues to allocate resources to this matter, it will affect other important work. It also advised that there is already information within the public domain and the provision of further information is not considered to inform public debate much more.
42. The Commissioner is satisfied that for the Council to respond to the request, the time it would take is significant and disproportionate compared to the public interest in the disclosure of the information. The Commissioner is therefore satisfied that, in this case, the balance of the public interest lies in the exception being maintained. 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

43. 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

44. 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.
45. 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

Michael Lea
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF