

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 10 February 2023

Public Authority: Bristol City Council
Address: The Council House
College Green
Bristol
BS1 5TR

Decision (including any steps ordered)

1. The complainant submitted two requests for information held by Bristol City Council (the council) about Stoke Lodge Playing Fields.
2. Whilst the council initially refused both requests under section 14 of FOIA, it later changed its position, now relying on the exception at regulation 12(4)(b) - manifestly unreasonable, of the EIR, to refuse both requests.
3. Whilst the Commissioner finds that the EIR is the correct information access regime, he has decided that the council is not entitled to rely on regulation 12(4)(b) as its basis for refusing either request.
4. The Commissioner has also found a breach of regulation 14(2) of the EIR, as the council failed to issue a refusal notice in response to either request within 20 working days.
5. The Commissioner requires the council to take the following steps to ensure compliance with the legislation:
 - Reconsider and respond to Request 1 and Request 2 again, without relying on regulation 12(4)(b) of the EIR.
6. The council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

Requests and Response

Request 1

7. The complainant, acting on behalf of a local community group, "[We Love Stoke Lodge](#)" (WLSL) raised concerns with the council about the condition of the walkways around the perimeter fence of Stoke Lodge Playing Fields (Playing Fields). On 23 August 2020, and 23 May 2021, (Request 1) they then made the following request for information:

"please would you provide copies of your correspondence and/or any notes of discussions (internally and/or with Cotham School) about this issue."

8. On January 2022, the council issued a refusal notice, citing section 14 of FOIA.

Request 2

9. The complainant, again acting as a member of WLSL, raised concerns with the council about works carried out on the pavilion at the Playing Fields. On 15 December 2021, they then made the following request (Request 2) for information:

"disclosure of all notes and minutes of discussions/meetings with Cotham School and all correspondence to and from the school, in relation to works to the pavilion (including additional external works), from 27 September 2019 to date."

10. On 20 January 2022, the council refused the request, citing section 14 of the FOIA; its response was identical to that issued in respect of Request 1.

11. The council provided one response to three internal review requests it had received from the complainant (including Request 1 and Request 2). It advised that it upheld its previous decisions to refuse all three requests under section 14 of the FOIA.

Scope of the case

12. The complainant has referred to decision notice [IC-127328-V0W6](#) in their submissions to the Commissioner; they believe the outcome of that case supports their argument that the council is not correct to have refused Request 1 and Request 2 on the basis that they are vexatious.

13. The council has confirmed to the Commissioner that as Request 1 and Request 2 both relate to environmental information, they should have been considered under the EIR; the council has said that it is now relying on regulation 12(4)(b) of the EIR, as its basis for refusing both requests.
14. The Commissioner will decide whether the council is entitled to rely on regulation 12(4)(b) of the EIR to refuse Request 1 and Request 2.

Reasons for decision

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

15. Regulation 12(4)(b) of the EIR provides that a public authority may refuse to disclose information to the extent that the request is manifestly unreasonable. Where it is found to be engaged, regulation 12(4)(b) of the EIR is also qualified by the public interest test.
16. Regulation 12(4)(b) of the EIR is designed to protect public authorities from exposure to a disproportionate burden or an unjustified level of distress, disruption or irritation in handling information requests. In effect, it works in similar regards to two exemptions within FOIA; section 12, where the cost of complying with a request is too great, and section 14, where a request is vexatious. The Commissioner's [guidance on section 14](#) is therefore a useful tool for public authorities considering whether a request is manifestly unreasonable.
17. The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal in the leading case on section 14(1), *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (ACC), (28 January 2013).
18. In the *Dransfield* case, the Upper Tribunal found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues. These are set out below; however, it should be noted that the Tribunal made it clear that these considerations were not an exhaustive list, and that a valued judgement should be made, taking into account all the circumstances of the case:
 - (1) the burden imposed by the request;
 - (2) the motive of the requester;
 - (3) the value or serious purpose of the request; and,
 - (4) the harassment or distress of and to staff.

The council's position

19. The council has said that whilst there are "several commonalities" between the request that was considered in decision notice IC-127328-V0W6, and Request 1 and Request 2, it believes there to be sufficient differences to warrant a separate assessment of the facts.
20. The council has argued that, in contrast to the request considered in decision notice IC-127328-V0W6, it is able to evidence a link between Request 1, and Request 2, and WLSL.
21. The council goes on to say that the majority of the requests that it has received are from individuals that can be directly associated with, or linked to WLSL, and that to deal with such requests (which includes Request 1 and Request 2) are causing a "grossly oppressive burden".
22. The council has set out its main arguments in support of its decision to apply the exception at regulation 12(4)(b) to both Request 1, and Request 2, using the same four points set out by the Upper Tribunal in the Dransfield case (as described in paragraph 17 of this decision notice). The council's detailed representations have been summarised by the Commissioner under the following bullet points:

Burden

- Between 1 January 2019, and 31 December 2022, the council received 55 information requests and 51 complaints about Stoke Lodge "largely from the same individuals".
- Information requests have typically been submitted in "flurries". The council cites an example where it received seven requests for various sets of internal correspondence in a three month period in 2021, and then "very little for the rest of the year."
- There have been overlapping requests with complaints since 2018.
- A significant amount of the information requested is for internal/external correspondence and notes and meetings of calls, typically covering one to two years or more. There is a notable pattern in the format of the majority of requests.
- The council has different roles, and is involved in multiple issues relating to the Playing Fields. As such, a large volume of information is held; it therefore takes a substantial amount of time for information to be located and prepared for disclosure, which creates a significant burden on resources.

- Taken as a whole, the volume of requests, received in short bursts, the nature and content of the requests, and breadth and volume of data represent a grossly oppressive burden on the council.

Motive and value

- Whilst the circumstances of the Playing Fields may be a matter of public interest, it does not follow that all information requests that are made in the public interest.
- A distinction can be made between the legitimate interests of the requester(s) about matters relating to the Playing Fields, such as the removal of the fence, and the nature of the requests submitted for such purposes.
- "Piecemeal disclosures of correspondence between various parties serves little public interest", and frustrates the council's ability to address the enquiries, and complaints, which are also being raised by the requesters.
- There is evidence of attempts to circumvent considerations which would allow it to aggregate the cost of compliance. The council has provided details of eight requests (five of which appear to have been made within a short space of time) that it received between January and August 2021, stating that they were made by different people, none of whom have an explicit affiliation with WLSL. The council argues that the nature and format of these requests indicates they were made as a result of a connection to WLSL, and in order to keep within the cost limits.

Distress

- The council states that "irrespective of the intention of the requesters," the cumulative result of the requests has had a detrimental effect on certain officers and has led to substantial distress.
23. The council has said that it believes that as the requester is known to be a member of WLSL, it is able to evidence that Request 1 and Request 2 are part of a campaign.
24. The council goes on to say that whilst it is unable to show that the purpose of any campaign is to harass the authority into taking a position against the School, nonetheless there is still a degree of coordination between the requests that it has received which is sufficient to infer that a significant proportion of the requests are done by, or on behalf of, WLSL. It argues that these requests, when considered together, are causing a "grossly oppressive burden" to the council.

25. The council argues that the requester, as a spokesperson of WLSL, "must bear a greater degree of responsibility for the cumulative impact of the campaign, even if it is not possible to conclusively identify individual requests from other requesters as being components of the campaign."
26. The council goes on to say that if it was unable to aggregate the impact of the requests that are received in a case such as this, then it considers that any group with a semblance of organisation would be able to circumvent those parts of the regulations which are designed to protect the limited resources of public bodies "with impunity."

The Commissioner's analysis

27. In decision notice IC-127328-V0W6, the Commissioner said that there was insufficient evidence to show a connection between the requester and WLSL (and a 'campaign'). He went on to decide that the council could not rely on regulation 12(4)(b) as its basis for refusing the request.
28. However, within the same decision notice, the Commissioner also explained why he did not accept that, when considered as a whole, the requests that had been received by the council (it had provided details of all requests that it had received about the Playing Fields since 2019) were causing an unreasonable burden; this was regardless of whether or not they could be directly associated with WLSL.
29. In this case, the council has provided some detailed explanations regarding the detriment and distress which it believes to have been caused to certain staff as a result of the volume and nature of the requests and complaints it has received, and continues to receive, about the Playing Fields.
30. The council has also argued there is evidence of a deliberate attempt by the group to circumvent the regulations by acting together to submit a number of requests in quick succession; it refers to requests being received in "flurries", and then periods of time when it does not receive any requests.
31. The Commissioner accepts that some of the requests received by the council appear similar in format, relate to the same or similar issues, and may possibly be from individuals who support the aims of WLSL, but have not explicitly identified themselves as being members of the group. However, he does not regard this to be evidence of any coordinated campaign and/or a deliberate effort to abuse the information access process.

32. The Commissioner is mindful that the number of associated requests made within a short space of time might increase when a particular issue arises that attracts interest in the community (such as a poorly maintained muddy walkway in winter, or work being carried out on the pavilion that may not comply with the permissions that have been granted).
33. With regard to the value and purpose of Request 1 and Request 2, the Commissioner is satisfied that the issues relevant to both requests would be of some interest to the local community; the first request relates to health and safety, the second is about a planning issue. In the Commissioner's opinion, it is reasonable to expect transparency about how such matters are dealt with.
34. The council also failed to provide a response to the complainant's enquiries and concerns about the maintenance of the walkways, and also the works on the pavilion, despite explicitly confirming that it would do so. In the Commissioner's view, this weakens the argument that Request 1, and Request 2, should be refused on the basis that they are manifestly unreasonable.
35. The Commissioner has considered all the additional information provided by the council in support of its position to refuse Request 1 and Request 2. However, he is not persuaded that the council has been able to evidence any significant differences, or change in circumstances, which would lead him to arrive at a different view to that set out within decision notice IC-127328-V0W6; this is particularly in relation to the alleged burden caused to the council by the receipt of the requests (at the time that Request 1 and Request 2 were received) about the Playing Fields.
36. The Commissioner therefore concludes that the volume and nature of the requests were not, at the time that both Request 1 and Request 2 were received, causing a 'grossly oppressive burden' to the council.
37. Furthermore, having taken into account the circumstances directly relevant to Request 1 and to Request 2, including the council's handling of the issues relevant to each request, the Commissioner is satisfied that there is some value and purpose to both requests.
38. It is therefore the Commissioner's decision that Request 1 and Request 2 were not manifestly unreasonable, and hence regulation 12(4)(b) is not engaged.
39. The Commissioner therefore requires the council to respond to Request 1 and Request 2 again (separately), without relying on regulation 12(4)(b) as its basis for refusing either request.

Procedural matters

40. The council failed to issue a refusal notice in response to Request 1 and Request 2 within the required 20 working days. The delay in responding to Request 1 was particularly severe.
41. The Commissioner has found a breach of regulation 14(2) in respect of both Request 1 and Request 2.

Right of appeal

42. 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

43. 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.
44. 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

Suzanne McKay
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF