

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 3 April 2023

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

Decision (including any steps ordered)

1. The complainant requested information with regards to land used for educational purposes. Bristol City Council (the council) refused the request under regulation 12(4)(b) of the EIR as it deemed it to be manifestly unreasonable.
2. The Commissioner's decision is that regulation 12(4)(b) of the EIR is not engaged.
3. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the complainant's request without relying on regulation 12(4)(b) of the EIR.
4. 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.

Request and response

5. On 8 August 2022 the complainant made the following information request to the council:

"I am seeking information about the use of landowner statements under section 15A(1) of the Commons Act 2006 in relation to publicly-owned land that is held for educational purposes. To assist in your searches, I believe this is likely to involve members of the Education Property Services Team.

Please could you provide copies of any internal or external correspondence or minutes of calls/meetings relating to the making of a landowner statement in relation to education land owned by Bristol City Council (including land leased to academy schools or otherwise)?"

6. The council refused the request on 18 August 2022 under regulation 12(4)(b) of the EIR – manifestly unreasonable. It upheld its position in its internal review on 4 October 2022.

Scope of the case

7. The complainant contacted the Commissioner on 12 October 2022 to complain about the request being refused.
8. The scope of the case is for the Commissioner to determine whether regulation 12(4)(b) of the EIR is engaged.

Reasons for decision

Regulation 12(4)(b) of the EIR – manifestly unreasonable

9. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose environmental information to the extent that the request for information is manifestly unreasonable. There is no definition of 'manifestly unreasonable' under the EIR, but the Commissioner's opinion is that 'manifestly' implies that a request should be obviously or clearly unreasonable for a public authority to respond to in any other way than

applying this exception The Commissioner has published guidance¹ on regulation 12(4)(b).

10. The Commissioner recognises that, on occasion, there is 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 complainant's request in this case could be considered vexatious.
11. The term 'vexatious' is not defined in the legislation. In *Information Commissioner vs Devon County Council and Dransfield* the Upper Tribunal took the view that the ordinary dictionary definition of the word is only of limited use, because the question of whether a request is vexatious ultimately depends upon the circumstances surrounding that request. The Tribunal concluded that 'vexatious' could be defined as "...manifestly unjustified, inappropriate or improper use of a formal procedure" (paragraph 27). This clearly established that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.
12. In the Commissioner's view, the key question for public authorities to consider when determining if a request is vexatious is whether the value and purpose of the request justifies the distress, disruption or irritation that would be incurred by complying with it.
13. The Commissioner's understanding is that this request relates to the Stoke Lodge Playing Field. The Commissioner made a decision² on 22 August 2022 that a different request relating to Stoke Lodge playing field was not manifestly unreasonable. The council was asked to confirm its position in light of that decision.
14. The council, on review, has explained to the Commissioner that whilst it initially refused this request on the basis that it also considered it was

¹ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/manifestly-unreasonable-requests-regulation-12-4-b-environmental-information-regulations/>

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4021510/ic-127328-v0w6.pdf?fbclid=IwAR3pufZJL1XF2kjHRPQhvJDDyup9SyeipgGoNoZPPbjih69USUaQPKq0pGE>

part of a campaign orchestrated by the "We Love Stoke Lodge" community group (WLSL), it accepts the Commissioner's findings in the 22 August 2022 decision notice that the council was unable to evidence this and that too broad an approach was taken.

15. Despite this, the council has told the Commissioner that it is still of the position that the request is manifestly unreasonable for the reasons set out below.
16. The council has told the Commissioner that two other requests were received from different members of the public, identical in wording to each other:

"Landowner statements

"My request is for any internal/external correspondence or minutes of calls/meetings relating to the making of a landowner statement under section 15A (1) of the Commons Act 2006 in relation to any Council owned property.

Please could you confirm if you hold any internal/external correspondence or minutes of calls/meetings relating to the making of a landowner statement under section 15A (1) of the Commons Act 2006 in relation to any Council owned property.

My request was not limited to the statement itself."

17. The council noted that the two other requests are very similar to the complainant's request. It also quotes the Commissioner's guidance which states:

"Several different requesters are acting together as part of a campaign to disrupt your organisation by the sheer weight of requests they are submitting. Then, you can take this into account when determining whether any of those requests are vexatious"

18. The council has also referred to Dr Gary vs ICO and the University of Salford, (EZ/2011/0060)³, in which it was determined that a small group of individuals was acting together to create disruption to the university.

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[https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1288/Duke,%20Gary%20Remitted%20EA.2011.0060%20\(21.05.14\).pdf](https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1288/Duke,%20Gary%20Remitted%20EA.2011.0060%20(21.05.14).pdf)

19. The council has submitted to the Commissioner that although it is not possible to prove that the request in this case is from a WLSL campaign, the council states it is aware that the complainant does not live in Bristol and so this is not a local matter to them, and given the wording of the requests it is satisfied that on the balance of probabilities the requestors co-ordinated their requests. Therefore it considered the request is manifestly unreasonable.
20. The Commissioner has reviewed the council's submissions in this case. On the physical location of the complainant point, his view is that this does not carry any weight. Legitimate and constructive interest in the subject matter of the request is not limited only to Bristol residents. On the issue of the complainant's request being made as part of a campaign, the Commissioner's view is that even if the complainant had made this request in concert with the other two requests that were identical, the council has not convinced the Commissioner of "...a campaign to disrupt your organisation by the sheer weight of requests."
21. The council has not persuaded the Commissioner that the complainant's request was manifestly unreasonable. The Commissioner therefore finds that regulation 12(4)(b) of the EIR is not engaged and the council is required to carry out the step ordered in paragraph 3 above.

Right of appeal

22. 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

23. 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.
24. 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

Ben Tomes
Group Manager
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