

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 24 January 2023

Public Authority: Monmouthshire County Council
Address: County Hall
The Rhadyr
Usk
NP15 1GA

Decision (including any steps ordered)

1. The complainant has requested information about Old Monmouth Road. Monmouthshire County Council (the Council) has refused to comply with the request as it considers it to be manifestly unreasonable on grounds of costs under regulation 12(4)(b) EIR.
2. The Commissioner's decision is that the exception is engaged and the public interest lies in maintaining the exception.
3. The Commissioner does not require any further steps to be taken.

Request and response

4. On 28 August 2022, the complainant wrote to the Council and requested information in the following terms:

"Please provide ALL data on MCC file, including all metadata, referring to Old Monmouth Road."

5. The Council responded on 6 September 2022 applying regulation 12(4)(c) FOIA, as it considered that the request had been formulated in too general a manner and asked for clarification on the specific information sought.
6. Following further correspondence, on 7 November 2022, the Council said that the request was manifestly unreasonable on grounds of cost under regulation 12(4)(b) EIR.
7. The complainant requested an internal review. In particular the complainant refined the request for:

'ALL data MCC hold relating to the address Old Monmouth Road, from 01/02/2022 to date'

' It's around 10 houses.

I do not need :

the electoral roll, as I know who people are.x

passenger transport records - there are none.x

Social service records would be exempt anyway x '
8. The Council provided the result of the internal review. It upheld its application of regulation 12(4)(b) EIR on the grounds of cost.

Scope of the case

9. The complainant contacted the Commissioner on 17 November 2022 to complain about the way that their request for information had been handled.
10. The Commissioner considers the scope of his investigation to be to determine whether the Council is entitled to rely upon regulation 12(4)(b) EIR on grounds of costs.

Reasons for decision

Regulation 12(4)(b)

11. 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.

12. 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 cost and the diversion of resources.
13. In this case 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.
14. 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 £600 for Defra.
15. 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.
16. 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.
17. 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 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.
18. 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.
19. The Commissioner's guidance on regulation 12(4)(b) EIR explains that:

"In assessing whether the cost or burden of dealing with a request is "too great", public authorities will need to consider the proportionality of

the burden or costs involved and decide whether they are clearly or obviously unreasonable.

This will mean taking into account all the circumstances of the case including:

- the nature of the request and any wider value in the requested information being made publicly available;
- the importance of any underlying issue to which the request relates, and 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 the public authority 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.

It should be noted that public authorities may be required to accept a greater burden in providing environmental information than other information.

In assessing the level of costs that might be incurred in responding to a request, we suggest that public authorities use a rate of £25 per hour for any staff time involved. This is in line with the rate applicable under FOIA by virtue of The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. This does not mean that the FOIA fees regulations apply to requests that fall to be considered under the EIR. However, we take these regulations to give a clear indication of what Parliament considered to be a reasonable charge for staff time.

In assessing whether the cost, or the amount of staff time involved in responding to a request, is sufficient to render a request manifestly unreasonable the FOIA fees regulations may be a useful starting point. They are not, however, determinative in any way."

20. The Council has explained that the following would be required to comply with this request:
- Request that more than 1500 members of staff search their emails for any reference to Old Monmouth Road.
 - Search more than 60 business ICT systems and manual file stores looking for references to Old Monmouth Road.
 - Read through all the information uncovered and check it for personal information to redact it for onward submission.
21. The Council noted that the complainant had attempted to refine the request however it explained that the Council's records are not necessarily stored in date or address order and therefore it would still have to search individual email accounts, ICT systems and manual files to find ALL information relating to Old Monmouth Road.
22. Given the breadth of this request and the fact that 1500 staff member's individual email accounts would need to be searched, 60 business ICT systems and manual records, even allowing just 2 minutes search time per staff member and for the 60 ICT systems this already comes to over 50 hours work. This would not take into account the work required to search manual records. Whilst there is not a cost limit applicable in this case, it is clear complying with this request would have significant cost implications and given the limited wider value in providing all information referring to Old Monmouth Road, the Commissioner considers that the request is manifestly unreasonable on grounds of costs under regulation 12(4)(b) EIR.

Public interest test

23. Whilst the Commissioner considers that there is a general public interest in openness and transparency, this does not outweigh the public interest in the Council expending resources on a request that is manifestly unreasonable.

Regulation 9

24. There is a duty on a public authority to provide an applicant with appropriate advice and assistance when applying regulation 12(4)(b) of the EIR so far as it is reasonably practicable. This is to assist the applicant in framing a new request which could be potentially considered without hitting any threshold of cost and time.
25. In this case the Council included a link to its website where it lists all of the council services it offers to enable it to browse and choose the specific services the complainant would like it to provide information on.

26. The Council has provided the complainant with information to assist her in refining her request in this case and so the Commisisoner is satisfied it complied with regulation 9 of the EIR. The Council has made the Commisisoner aware that the complainant has subsequently made refines requests to the Council.

Right of appeal

27. 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

28. 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.
29. 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.....

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