

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

Date: 4 July 2023

Public Authority: The Governing Body of the University of Bath
Address: Claverton Down
Bath BA2 7AY

Decision

1. The Commissioner's decision is that the complainant's request for correspondence about a planning application is manifestly unreasonable under regulation 12(4)(b) of the EIR. The University of Bath doesn't have to comply with it or take any corrective steps .

Request and response

2. The complainant made the following information request to the University of Bath ('the University') on 23 December 2022:

"The University previously supplied some information within Freedom of Information responses 2021/196 & 2022/069. This related to a planning application made by the university, Local Planning Authority (LPA) Ref 21/01862/FUL

The University has made a new planning application LPA Ref 22/04720/FUL. This is related to the proposed development of some new sports pitches, including floodlights

I would like copies of all communications between the university, it's Agent(s) and all third party, company officers, that have been consulted, and/or supplied information as part of the planning

process. This would include, but not limited to, Jones Lang LaSalle (JLL). Mitchell Eley Gould. Verde Recreo (now trading as "Verde"). Neil Johnson, Sports Lighting Consultants Ltd, Musco Lighting. Define Planning & Design Ltd (sometimes known as, or referred to, as "Define") Benchmark South West Ltd. Ethos Environmental Planning. ERCO. Simpson tws. DFL Lighting Design (Designs for Lighting Ltd) Environmental Laboratory Ltd. IMA Transport Planning.

The communications included should be from the earliest date the project was considered to today's date.

If any information was supplied within FOI responses, 2021/196 and/or 2022/069, they need not be included again with this new request."

3. In its refusal notice and internal review response, the University referred to both regulation 12(4)(b) and 12(4)(d)(material still in the course of completion).
4. The University's final position in its internal review of 12 April 2023 was that the request was manifestly unreasonable because of the disproportionate burden involved in complying with it. The University confirmed that regulation 12(4)(b) of the EIR was therefore engaged.

Reasons for decision

5. In its submission to the Commissioner the University confirmed that it's relying on regulation 12(4)(b) of the EIR to refuse the complainant's request. This reasoning therefore considers whether the University can rely on that exception.
6. Under regulation 12(4)(b) a public authority may refuse to disclose environmental information if the request for information is manifestly unreasonable. A request may be manifestly unreasonable because of the excessive burden caused by complying with it, or because the request is vexatious.
7. The purpose of the exception is to protect public authorities from a manifestly unjustified, inappropriate or improper use of the EIR.
8. The University has indicated that complying with the request in this case would cause an unjustified burden. That is therefore the key thing the Commissioner will consider; whether complying with the request is likely to cause a burden to the University that is disproportionate to the request's value.

9. The University has provided the following background and context in its submission to the Commissioner:

"This request is not in isolation and forms part of a pattern of 145 requests, subsequent reviews and complaints made to the University by this requestor over the years, however we have considered this request as we consider all the requests we receive, on an individual and independent basis.

University staff across various departments have spent hundreds of hours to provide information, where held, to the requestor. Some of the requests have resulted in large amounts of past and present University information being provided to the requestor and there have been few responses where information is refused outright due to exemption or exception.

For example, in 2022 out of [the complainant's] 25 requests with subjects ranging from Procurement, VC events, Car Parks and communications with National Trust, only two (2) requests were fully withheld due to exemption or exception, 333 being one of these.

The University also receives numerous emails, demands and queries direct to our staff and through other means, including our active Local Residents Forum as part the requestor's campaign against the University of Bath.

[The complainant's] Freedom of Information requests, queries and general demands on the University are broad in scope asking for instance about the cost of food and drinks, historic plans, Art Work and Bath and North East Somerset Councillors' attendance at the University's Public events.

This year's complaint about the University is in regard to our response to the 25th Freedom of Information request received from [the complainant] in 2022 about the University's current planning application 22/04720/FUL. Full documentation for which is available on Bath and North East Somerset (B&NES) Council Planning Portal here:

<https://www.bathnes.gov.uk/webforms/planning/details.html?refval=22%2F04720%2FFUL>

The requested information was for all University's communications with third parties about the proposed planning application. These were provisional communications, much of which has resulted in the extensive and completed documentation which is available for public comment and/or objection on the B&NES Local Planning Authority portal, from 18 and 22 November 2022 onwards. Further information

has also been added to the Local Planning Authority portal throughout 2022 and 2023.

[The complainant], along with other local residents had been apprised of the University's proposed project and proposed planning application on 18 October 2022. [The complainant] has known and made full use of the publicly accessible planning portal within the comments and documents fields of the planning application since 3 January 2023 and continues to do so:

<https://www.bathnes.gov.uk/webforms/planning/details.html?refval=22%2F04720%2FFUL#documents> Section

The requestor's request for review is based on his ongoing conjecture and opinions about the University, the Local Planning Authority and third parties."

10. The University has gone on to explain why it's relying on regulation 12(4)(b) on this occasion. It says that the information requested was considerable and that complying with it would involve staff time and resources across the University. It seemed that the complainant hadn't considered the extensive information the University had already provided and which the complainant knew all about.
11. The University said it took into account:
 - the information it had provided and the relevant information that's already publicly accessible
 - whether the requested information would be of value to the complainant, the public or any section of the public
 - the number of previous information requests the complainant has made; and
 - whether the purpose and value of the request provided sufficient grounds to justify the distress, disruption or irritation that would be caused by complying with that request.
12. The University concluded that the tests of "vexatiousness" [ie the test for a request being manifestly unreasonable] were met, in that complying with this request would cause:
 - a significant burden to particular staff, especially given the history of its previous responses and the prospect of the complainant's future requests; and
 - irritation and distress to University staff.

13. The University also noted this is one of a series of requests that are unreasonably persistent, diverting the University from its primary purpose, and requiring disproportionate effort to respond to.
14. At internal review, the University considered the past pattern of the complainant's requests and their increasing and various demands on the University and its staff over the last seven years. These have not been isolated to FOIA/EIR requests, where responses may result in numerous follow up enquiries.
15. The University says it also took into account the complainant's repeated allegations about the University and its staff, its plans and its relationship with Bath & NE Somerset (B&NES) Council and the complainant's request "for the instigation of a Public Interest Disclosure about the University."
16. The University concluded that their latest request was part of the complainant's long-term campaign against the University. It said that the complainant's own investigations and requests over the course of seven years have not found any confirmed wrongdoing or resulted in any conclusion - other than to use information legislation for their own purpose, which takes up hundreds of University hours and resources.
17. Finally, regarding the current request, in its internal review the University had advised that it considered it would take more than 37 hours to comply with the request. It said there are more than 300 items (eg emails) in scope of the request and estimated that it would take on average 7.5 minutes to read, review and redact information (such as personal data) from each item to prepare it for disclosure.
18. To summarise their complaint to the Commissioner, the complainant has referred to breaches of the Bribery Act and Fraud Act by University staff. They have expressed concerns about University planning applications and possible false statements the University has made about those applications. The complainant has also discussed at length their concerns about B&NES/the Local Planning Authority, Councillors, Council officers and the former CEO of B&NES.
19. From the evidence in front of the Commissioner, it appears that the complainant's concerns about the University's planning applications have become something of a fixation. This has resulted in the complainant submitting a high volume of information requests to the University over a prolonged period.
20. The Commissioner has reviewed the University's correspondence with the complainant and both parties' correspondence to him. He has noted that the complainant has been submitting information requests to the

University for seven years; submitting 143 requests since 2016. The requests appear to have concerned various matters, but most might be said to be broadly or specifically associated with University planning applications.

21. Considering all the circumstances of the request in this case, the Commissioner is satisfied that the request in this case can be categorised as manifestly unreasonable because the burden caused by complying with it would be disproportionate to the request's value.
22. The Commissioner has taken account of the background and context of the request, the fact that the complainant has not presented any compelling evidence to support their concerns about the University (and other bodies), the planning information already in the public domain and the fact that the University has said that the majority of the requested correspondence is simply likely to have resulted in the published planning information ie it would not shed any new light on that application.
23. The Commissioner also considers that there is an element of vexatiousness to the complainant's ongoing correspondence to the University. They suspect the University (and other bodies) of wrongdoing and appear to be using the information legislation to uncover evidence of that wrong-doing ie they are using the EIR speculatively, to fish for information. The University has noted that in the seven years that the complainant has been submitting requests to it, they haven't unearthed any such evidence.
24. However, the Commissioner is satisfied that that the complainant's request is manifestly unreasonable. This is because complying with it would cause a burden to the University that is disproportionate to the request's minimal value. He finds that the University was entitled to apply regulation 12(4)(b) to the request and has next considered the public interest test associated with regulation 12(4)(b).

Public interest test

25. The complainant has stressed that the University receives public funds and must therefore be accountable to the public.
26. In its submission to the Commissioner, the University acknowledged the public interest in University land, the environment and local resident issues and in its use of public money.
27. The University says it is both transparent and accountable about development plans because it consults the public in advance, publishes

its Campus Masterplan and makes plans and documentation about planning applications publicly accessible.

28. The University also holds regular Local Residents' Forums, where residents are briefed on its capital plans and its programme of events for its campus.
29. The University believes that the public interest is met through published planning documentation, by its public consultations and through the University publishing its Masterplan, Strategy, financial statements and annual reports.
30. The University argues that it isn't in the public interest to divert time, money and resources on the complainant's request. Nor is the negative impact on staff of another EIR request from the complainant, and "the disproportionate amount of work on unfinished documents and communications which are the precursor for the completed and published information" in the public interest.
31. The University says that disclosing unfinished and commercially sensitive information which would affect third parties is also not in the public interest. Complying with the request would undermine the University's ability to engage third parties' future confidence, damage negotiations and lead to third parties being less likely to provide information to the University. This may harm the University's ability to secure the best service, products and value for money in the future. The University says that the third parties concerned in this case are not subject to Freedom of Information [or EIR] legislation and this request uses the legislation and process to try and obtain third party emails and communications.
32. The University notes that the complainant considers that it 'must be accountable to the public' and that Freedom of Information is their way to hold the University to account. The University considers that this is indicative of the complainant's fixation with the University and their ongoing conjecture about its probity. This conjecture has resulted in numerous Freedom of Information requests, direct emails to University staff and to third parties that the University deals with.
33. The University says that in its response to the request it had noted the public bodies involved in regulating the University and the ways in which complaints about planning could be lodged and made clear to the Local Planning Authority.

34. Having considered the information requested and the extensive documentation available on B&NES Planning Portal and the public interest, the University concluded, from a sample of requested information that it had compiled, that much of the requested information would have simply led to the extensive completed documentation about the planning application which is freely available on the Local Planning Authority portal.
35. The Commissioner agrees with the University. He hasn't been persuaded that the complainant's request has a great deal of value, indeed has found it to be manifestly unreasonable. The Commissioner is satisfied that the relevant planning information that's already available, and the local groups that the University supports, meets the general public interest in transparency about its planning intentions. If the complainant has concerns about a planning application the University has submitted, there are more appropriate routes they can follow, for example through the Local Planning Authority or Local Government Ombudsman.
36. The Commissioner's decision is therefore that there's greater public interest in the University being able to rely on regulation 12(4)(b) of the EIR to refuse the request in this case, so that it can focus its staff and resources on more important matters.

Right of appeal

37. 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

38. 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.
39. 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

Cressida Woodall
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