

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 9 November 2023

Public Authority: East Riding of Yorkshire Council
Address: County Hall
Beverley
HU17 9BA

Decision (including any steps ordered)

1. The complainant requested information from East Riding of Yorkshire Council ("the Council") relating to a waste facility.
2. The Commissioner's decision is that the Council is not entitled to rely on regulation 12(4)(b) (manifestly unreasonable) to refuse to provide the requested information.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the request which does not rely 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 the Act and may be dealt with as a contempt of court.

Request and response

5. On 16 August 2023, the complainant wrote to the Council and requested information in the following terms:

“Please provide all internal emails relating to the Wastewise facility in Willerby sent between 01/01/2022 and 01/01/2023 and handled by the Service Manager. This does not need to include any correspondence in relation to public surveys or associated odour reports.”

6. The Council refused to provide the requested information citing regulation 12(4)(b) (manifestly unreasonable) of the EIR as its basis for doing so.

Reasons for decision

7. This reasoning covers whether the Council is entitled to rely on regulation 12(4)(b) of the EIR to refuse to provide the requested information.

Regulation 12(4)(b) – manifestly unreasonable

8. 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. In this case, the Council is citing regulation 12(4)(b) on the grounds that to comply with it would impose a significant and disproportionate burden on its resources, in terms of time and cost.
9. 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 £450 for public authorities such as the Council.
10. 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.
11. 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.
 12. While the Fees Regulations relate specifically to FOIA, the Commissioner considers that they provide a useful point of reference where the reason for citing regulation 12(4)(b) of the EIR is the time and costs that compliance with a request would expend as is the case here. However, the Fees Regulations are not the determining factor in assessing whether the exception applies.

The Council's position

13. In its submissions to the Commissioner, the Council explained that it has conducted a search of the service manager's email mailbox for emails dating from between 1 January 2022 and 1 January 2023 using search terms such as Biowise, Wastewise and Willerby. This search identified 260 emails which may fall within the scope of the request.
14. The Council explained that in order to provide the requested information it would need to extract all of the 260 emails it has identified as potentially falling within the scope of the request from the service manager's email account by converting each email to a PDF document. The emails would then need to be collated into a single file so they can easily be reviewed. The Council estimates that it would take approximately five minutes to extract each email from the service manager's email account and so in total, it calculated that it would take 1300 minutes to extract all 260 emails (5 minutes x 260 emails = 1300 minutes).
15. The Council also explained that once it had extracted all 260 emails into a single file, it would then need to review each email to determine whether it falls within the scope of the request. The Council considers that it would not always be obvious whether an email falls within the scope of the request and so it estimates that it would take approximately five minutes to review each email. Therefore, in total, it would take the Council 1300 minutes to review all 260 emails to determine whether they fall within the scope of the request.
16. The Council explained that once it has determined which emails fall within the scope of the request, it would then need to consider whether those emails could be disclosed or whether redactions were required. The Council considers that it would take approximately five minutes to review each email and determine whether the email could be disclosed. As the complainant has requested internal emails, the Council considers

that it is likely that regulation 12(4)(e) (internal communications) of the EIR would apply to any emails falling within the scope of the request.

The Commissioner's position

17. The Commissioner does not consider that the Council would need to convert the 260 emails identified as potentially falling within the scope of the request to a PDF in order to provide the requested information. This appears to be a preference of the Council rather than a necessary step. Furthermore, even if it was necessary for the Council to convert each of the 260 emails to a PDF, the Commissioner considers that it would take a few seconds to convert each email to a PDF rather than five minutes as estimated by the Council.
18. Furthermore, the Commissioner considers the Council's estimate of five minutes to review the 260 emails to determine whether they fall within the scope of the request to be excessive. He considers that due to the search terms used by the Council when conducting its search, it is likely that the 260 emails identified as potentially falling within the scope of the request will fall within the scope of the request. Even if this is not the case, the Commissioner is of the view that on average, it would not take the Council an average of five minutes to review each email simply to establish whether they are within the scope of the request. Instead, his view is that an average of a few seconds is more likely to be a reasonable estimate for this task.
19. The Commissioner accepts that any emails falling within the scope of the request may engage regulation 12(4)(e) as the complainant has requested internal emails. However, whilst the Commissioner acknowledges that the Council would need to consider the public interest in disclosing those emails, the evidence available to the Commissioner on this point does not convince him that this would be a task so great as to render the request manifestly unreasonable.
20. The Commissioner considers that the Council has failed to demonstrate that the request would impose a significant burden on its resources. Therefore, the Commissioner's decision is that the request is not manifestly unreasonable and so the Council is not entitled to rely on regulation 12(4)(b) to refuse to provide the requested information.

Right of appeal

21. 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

22. 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.
23. 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
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