

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

**Decision notice**

**Date:** 25 November 2015

**Public Authority:** Arun District Council  
**Address:** 1 Arun Civic Centre  
Maltravers Road  
Littlehampton  
West Sussex  
BN17 5LF

**Decision (including any steps ordered)**

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1. The complainant has made a request to Arun District Council ("the council") for information about a community group that is represented on the Bognor Regis Regeneration Board. The council refused the request under regulation 12(4)(b) of the Environmental Information Regulations ("the EIR").
2. The Commissioner's decision is that the council has correctly refused the request under regulation 12(4)(b), but should also have cited section 12(1) of the Freedom of Information Act ("the FOIA"). The Commissioner has also identified that the council breached the requirement of regulation 11(4).
3. The Commissioner does not require any steps to be taken.

**Request and response**

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4. On 1 November 2014 the complainant wrote to the council and requested the following:  
*Please provide me with a copy of all communications between the council and the Bognor Regis Vision Group in the last 5 years.*
5. The complainant added clarification to the request on 4 November 2014:

1. *I understand that the full title of this group is Bognor Regis Regeneration Vision Group.*
  2. *Please include all communications with the Bognor Regis Regeneration Vision Group and / or its Chairman.*
6. The council responded on 11 November 2014 and advised that the request would be likely to exceed the appropriate limit in costs, and offered advice and assistance to refine it.
7. The complainant provided a refined request on 18 November 2014:
  1. *I am only interested in communications with officers or members who have, or have had, involvement in Bognor Regis regeneration matters.*
  2. *As far as timescale is concerned I would suggest 6 months prior to the commencement of the Bognor Regis Regeneration Board. Is that reasonable? The reason I am suggesting this is that it might shed light on why this group in particular was selected for such an important position (and to the exclusion of all other local community groups).*
8. The council responded on 19 December 2014 and refused the refined request under regulation 12(4)(b) of the EIR. It provided advice and assistance by offering to locate contextual information about the matter.
9. The complainant requested an internal review on 17 January 2015.
10. The council provided the outcome of its internal review on 12 June 2015. It maintained its position that regulation 12(4)(b) was engaged.

## **Scope of the case**

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11. The complainant contacted the Commissioner on 16 June 2015 to contest the authority's response.
12. The Commissioner therefore considers the scope of this case is the determination of whether the council has correctly refused the request.

## **Reasons for decision**

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### **Background**

13. The complainant has requested correspondence from and to a community group named the 'Bognor Regis Regeneration Vision Group' ("the group"). This group is a member of the 'Bognor Regis

Regeneration Board' ("the board"), which was created by the council in 2007 to act as a partnership between public and private bodies in developing a strategy for local regeneration.

14. The complainant specifically seeks correspondence between the group and the council in the six months prior to the establishment of the board. The Commissioner understands that this period of time would span between 2006 and 2007.

### **Which access regime applies?**

15. The council considers that the requested information, if retrieved, would represent information that is environmental in nature. The Commissioner has reviewed documents submitted by the council which explain the purpose and remit of the group. Part of this remit concerns planning and development, and as such any held information would be likely to represent environmental information under regulation 2(1)(c) of the EIR. However it is also evident that the remit of the group extends to matters such as the economy, culture, and education. As such the Commissioner considers that any held information may also include non-environmental information that would fall under the terms of the FOIA. Notwithstanding this, it is evident from the council's submissions that there is no feasible method of identifying which access regime is applicable unless any and all held information was first collated.
16. The Commissioner's approach in scenarios where a request spans different access regimes is outlined in his public guidance<sup>1</sup>.
17. As outlined in that guidance, the first step a public authority should take is to consider the request under section 12(1) of the FOIA; under which the authority may include the initial collation of all relevant information and the costs associated with this.
18. The second step that the public authority should undertake is to consider the request under regulation 12(4)(b) of the EIR; under which it should apply the public interest test required by regulation 12(1)(b).

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<sup>1</sup> [https://ico.org.uk/media/for-organisations/documents/1192/calculating\\_costs\\_foia\\_eir\\_guidance.pdf](https://ico.org.uk/media/for-organisations/documents/1192/calculating_costs_foia_eir_guidance.pdf)

## **Step 1 – considering the request under the FOIA**

### Section 12 – Calculating the cost of compliance

19. Section 12(1) provides that:

*Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.*

20. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Regulations”) sets the appropriate limit at £450 for the public authority in question. Under the Regulations, a public authority may charge a maximum of £25 per hour for work undertaken to comply with a request. This equates to 18 hours work in accordance with the appropriate limit set out above.

21. A public authority is only required to provide a reasonable estimate or breakdown of costs and in putting together its estimate it can take the following processes into consideration:

- determining whether it holds the information;
- locating the information, or a document which may contain the information;
- retrieving the information, or a document which may contain the information; and
- extracting the information from a document containing it.

### Is the exclusion engaged?

22. The council has explained to the Commissioner that no relevant information has been immediately identified by officers within the council’s Planning and Economic Regeneration Service, which is the service most related to the activities of the group and the board. However the council is unwilling to confirm that no recorded information is held, due to the possibility of further correspondence being held elsewhere within the council.

23. The council considers that the complainant’s request would require the council to contact each officer and councillor to identify whether any relevant correspondence is held. This is because each of the seven service areas within the council currently has separate information systems, which prevents a centralised search from being undertaken. The council currently has in excess of 400 officers, and considers that the movement of officers with the organisation (including that resulting from a restructuring of the council in 2012), combined with changes to their roles and responsibilities through time, prevents it from effectively

identifying which officers may have been in communication with the group during the six month period specified by the request, which the council specified would cover a period spanning 2006 to 2007.

24. Having identified that this would be the most effective search process, the council conservatively estimates that it would take an average of ten minutes for each officer to search for and retrieve any relevant email and hardcopy correspondence. This would result in an estimated total of 66 hours of officer time across the council, and would represent a financial cost of £1650. However, this total does not include any communications or searches involving councillors, which the council believes would increase the total cost.
25. The Commissioner has considered the council's reasoning and estimations. In situations where a request seeks information that is already a number of years old and not held or otherwise referenced in a centralised system, the Commissioner appreciates that retrieving information may incur significant costs. In this case the information sought is general correspondence of unknown content or addressee, and which would require a comprehensive search across the entirety of the public authority. In this case, the Commissioner also notes that the calculated cost is more than three times that considered appropriate by parliament, with little apparent scope to reduce it within the appropriate limit. Having therefore considered the size of the council and the non-centralised system by which relevant information may be held, the Commissioner finds the council's arguments to be compelling, and accepts that compliance would exceed the appropriate limit.

Has appropriate advice and assistance been provided under section 16?

26. In circumstances where section 12 applies, section 16 of the FOIA requires a public authority to provide advice and assistance to requesters, so far as it would be reasonable to do so. In this case, it is evident that the council provided advice and assistance in an attempt to facilitate a refined request. When the refined request was found to still exceed the appropriate limit, the council advised the complainant that the Assistant Director or Planning and Economic Regeneration had offered to search for and provide wider contextual records about the creation and purpose of the board; however this offer was not accepted by the complainant. Having considered this, the Commissioner is satisfied that the council provided advice and assistance as was reasonable.

**Step 2 – considering additional obligations under the EIR**

27. The Commissioner has already identified that there is no feasible way of isolating non environmental and environmental information, and that

compliance would require all information to be collated in the first instance. Under the terms of the FOIA, the Commissioner has therefore found that section 12 is engaged.

28. As defined by the Commissioner's public guidance, a public authority should secondly consider the additional obligations required by the EIR.

Regulation 12(4)(b) – Requests that are manifestly unreasonable

29. Regulation 12(4)(b) provides that:

*For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that-*  
*(b) the request for information is manifestly unreasonable...*

30. The Commissioner has issued public guidance on the application of regulation 12(4)(b)<sup>2</sup>. This guidance contains the Commissioner's definition of the regulation, which is taken to apply in circumstances where either the request is 1) vexatious, or 2) where the cost of compliance with the request would be too great. In this case the council considers that circumstance 2) is applicable.
31. The EIR does not contain a limit at which the cost of compliance with a request is considered to be too great. However, the Commissioner's guidance suggests that public authorities may use The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 as an indication of what Parliament considers to be a reasonable charge for staff time.
32. For the purposes of the EIR, a public authority may use this hourly charge in determining the cost of compliance. However, the public authority is then expected to consider the proportionality of the cost against the public value of the request before concluding whether the request is manifestly unreasonable.

Is the exception engaged?

33. The Commissioner has already carefully considered the council's arguments for the estimated cost of compliance in paragraphs 21-24, and has found that this cost would exceed the appropriate limit set by parliament for the FOIA.

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[http://ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/manifestlyunreasonable-requests.ashx](http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/manifestlyunreasonable-requests.ashx)

34. Whilst environmental information has a separate right of access under the terms of the EIR, the Commissioner considers it reasonable that the costs calculated for section 12(1) of the FOIA should be used to inform his decision under the EIR. It is already evident to the Commissioner that any compliance with the EIR would require all requested information to be collated as a first step, and that this process would entail costs far in excess of that considered to be appropriate for the purposes of the FOIA.
35. Having considered the significant cost that compliance would require, in addition to the size of the council as a public authority, the Commissioner accepts that the request is manifestly unreasonable within the meaning of regulation 12(4)(b).

Regulation 12(1)(b) – the public interest test

36. Regulation 12(4)(b) is subject to the public interest test set out in regulation 12(1)(b). This specifies that a public authority may only rely on an exception if, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosure.

*Public interest arguments in favour of disclosing the information*

37. The council acknowledges that there is a strong expectation of transparency and accountability, and has considered the greater expectation attached to the disclosure of environmental information.
38. The Commissioner is also aware from the complainant's submission that the request relates to the inclusion of a community group on a public-private board created by the council, and in particular, how the group was chosen for inclusion. The complainant has stressed that this process is not publically known, and that the group's relationship with the council, along with its management, is not visible through any website or public meetings. Further to this, the complainant considers that any search for relevant information should be sufficiently easy to undertake by using keywords.

*Public interest arguments in favour of maintaining the exception*

39. The council's considerations of the public interest in maintaining the exception have focussed on the broadness of the request and the high cost that compliance would entail, which the Commissioner has already considered in deciding whether the exception is engaged. Further to this, the council has argued that it is a comparatively small public authority, and that compliance with the request would place considerable strain on its resources, particular that of its information



management team of two officers; who administrate an average of 45 information requests on a monthly basis.

40. The Commissioner is also aware that the council has offered appropriate advice and assistance, as required by regulation 9(1), by offering that a senior council officer would search for wider contextual information about the group and board. Whilst this was not accepted by the complainant, the council has provided example documents to the Commissioner that it has since located to illustrate that proceeding in this way may resolve the complainant's concerns about transparency.

*Balance of the public interest*

41. The Commissioner recognises the inherent importance of accountability and transparency in decision-making within public authorities, and the necessity of a public authority bearing some costs when complying with a request for information. However, in considering the public interest test for this matter, the Commissioner must assess whether the cost of compliance is disproportionate to the value of the request.
42. Whilst the complainant's concerns about the lack of transparency about the group's inclusion on the board have been noted, it has also emerged that the council has offered to search for and provide wider contextual information outside the parameters of the request that may address the complainant's concerns. This would appear to the Commissioner to be a more practical and cost effective means of improving transparency about the group and its place on the board, without placing the considerable strain on public resources (including the council's ability to manage other information requests) that a full search for all historic correspondence would entail.
43. Having considered the relevant factors in this matter, the Commissioner has concluded that the public interest favours the maintenance of the exception.

**Regulation 11 – internal review**

44. Regulation 11(1) provides that an applicant may make representations to a public authority, if he/she considers that the authority has failed to comply with the requirements of the EIR in relation to his/her request.
45. Regulation 11(4) requires that the authority notify the applicant of its decision in relation to the applicant's representations no later than forty working days after receipt of those representations.



46. The Commissioner notes in this case that the complainant in this case clearly requested an internal review on 17 January 2015, but that the outcome of this was not provided until 12 June 2015.
47. As the council failed to provide the complainant with notice of its decision within the appropriate time period, the council breached regulation 11(4).

## Right of appeal

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48. 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@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

49. 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.
50. 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 .....**

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
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