

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 5 August 2022

**Public Authority:** Cheshire East Council  
**Address:** Westfields  
Middlewich Rd  
Sandbach CW11 1HZ

#### **Decision (including any steps ordered)**

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1. The complainant requested information from Cheshire East Council ("the Council") about a right of way. The Council considered that the request was too burdensome and refused it under regulation 12(4)(b) of the EIR: Manifestly unreasonable requests.
2. The Commissioner's decision is that the exception at regulation 12(4)(b) is engaged and that the balance of the public interests favours the exception being maintained.
3. The Commissioner does not require the Council to take any steps.

#### **Request and response**

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4. On 1 July 2021, the complainant wrote to the Council and requested information in the following terms:  
  
"Please supply all information held which may be pertinent to the existence (by user or otherwise) of a direct right of way between Harris Close and Parkers Road CW1".

5. The Council responded on 12 July 2021, and explained that there was no official recorded public right of way at that location. It provided some additional explanations, an extract from the Definitive Map<sup>1</sup>, details of how to make a Definitive Map Modification Order (DMMO), and the contact details of the Public Rights of Way (PROW) team. It did not refer to any further recorded information being held.
6. The complainant requested an internal review on 14 July 2021, asserting that the Council had failed to consider everything falling within the scope of his request. He commented:

“Cheshire East must hold plenty of other diverse documentation, including, for example, planning agreements, development maps and photographs etc. etc. which pertain to this request... I would be grateful if you could now, diligently and properly, supply all of the information requested which is not yet available to me because it is in other unpublished Council records”.

7. He also stated:

“The request was carefully phrased so as to oblige the Authority to release ALL the evidence in its records which might in any way support or have a bearing upon an application for a DMMO”.

8. The Council sent the outcome of its internal review on 10 August 2021. It provided a link to some publicly available information, but stated:

“With regard to the additional information sought, the Council consider that your request [is] manifestly unreasonable in terms of officer time and the costs of that time it will require to search, locate and copy the information and it will be too burdensome to deal with. Therefore, the exception at regulation 12(4)(b) of the EIR applies to this part of your request.”

## **Scope of the case**

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9. The complainant contacted the Commissioner on 10 August 2021 to complain about the way his request for information had been handled.
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<sup>1</sup> The Definitive Map is a legal record of public rights of way. An application to update or alter it is known as a Definitive Map Modification Order (DMMO).

10. This decision notice considers whether the Council correctly refused the request as being manifestly unreasonable, under regulation 12(4)(b) of the EIR.

## **Reasons for decision**

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### **Regulation 12(4)(b) – manifestly unreasonable requests**

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. If engaged, the exception is subject to the public interest test.
12. In this case, the Council's position was that compliance with the request would place a manifestly unreasonable burden on its resources, in terms of time/cost.
13. The EIR do not provide a definition of what is manifestly unreasonable in terms of time/cost. This is in contrast to section 12 of the Freedom of Information Act 2000 (FOIA), under which a public authority can refuse to comply with a request if it estimates that the cost of compliance would exceed the "appropriate limit".
14. However, the FOIA "appropriate limit" can be a useful starting point in considering whether a request for environmental information can be refused as being manifestly unreasonable.
15. The FOIA appropriate limit is defined in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations"). These define the appropriate limit in terms of the amount of time which staff would be expected to take in complying with a request.
16. The Fees Regulations state that the relevant activities, set out below, may be calculated/charged for at a flat rate of £25 per hour of staff time. For the Council, the appropriate limit under the Fees Regulations would be £450; that is, 18 hours of staff time.
17. Under FOIA, a public authority is only allowed to include the cost of certain activities in its estimate: determining whether the information is held; 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.
18. However, since the Fees Regulations do not apply to the EIR, a public authority may take into account other activities and wider considerations

in terms of what may render a request for environmental information "manifestly unreasonable". It is also the case, however, that a public authority is expected to accept a greater burden when considering requests for environmental information.

19. Whether considering a costs estimate under either FOIA or the EIR, the Commissioner expects any estimate to be realistic, sensible and supported by cogent evidence. He also expects that, where possible, a sampling exercise will have been carried out.

### **The complainant's view**

20. The complainant commented that the Council appeared to be "deliberately misconstruing the position in terms of its own duties and what has been asked of it."
21. He stated: "A public right of way can perfectly well exist over private land which is not as yet recorded on the definitive map, and... the council itself holds the information necessary to establish that fact and to apply for the relevant modification order".
22. He also stated: "The council itself has a legal duty to keep the definitive map under continuous review and to modify it in accordance with any information it may hold in its own records".

### **The Council's position**

23. In this case, the Council noted from the complainant's internal review request that he had intended his request to cover a broad range of information. He referred to information held "in unpublished council records" and mentioned, by way of example: "planning agreements, development maps and photographs etc".
24. He specifically drew a link between his request and the requirements for applying for a DMMO, requesting: "ALL the evidence in its records which might in any way support or have a bearing upon an application for a DMMO".
25. The Council explained that, in carrying out its internal review, it had therefore interpreted the scope of the request as: "All unpublished documents and evidence which might in any way support or have a bearing upon an application for a DMMO at this location, including planning agreements, development maps and photographs etc."
26. The Council first determined that no DMMO application had been received for this location. This meant that there was no specific application which had been (or was being) considered or investigated, such as may have led to relevant information already being collated.

27. The Council explained that, whilst the requester had provided some examples of the types of information he would expect to be included, there is no definitive list of documentary evidence that is required for a DMMO; each case is different and would be judged on its own merits. It had therefore been challenging to establish exactly what records and documents would fall within the scope of the request.
28. It had therefore made enquiries, at the time of the internal review, with the following service areas within the Council:
  - The PROW team
  - The Highways Service
  - The Planning team
  - The Legal team
29. The outcome of these enquiries was that three of the four service areas responded that, considering the broad scope of the request, it was possible that relevant information was held, but that it would be very burdensome to locate it and consider it for disclosure.
30. The Council noted this but was able to reach a partial estimate of the time for compliance, by considering the examples provided by the complainant (planning agreements, development maps and photographs).
31. Specifically, the Council ascertained that 71 planning applications had been received covering Parkers Road and Harris Close since the estate was built. Each application contained plans and other documents: the Council considered that even if each application only contained 10 pages, which was conservative, this would equate to 710 pages which would need to be reviewed and also cross-referenced to check if the information was already publicly available.
32. The Council estimated that it would take 5 minutes to review each of the 710 pages, which would equate to over 59 hours of staff time.
33. The Council also emphasised that it would be extremely difficult to identify all of the other types of information falling within the scope of the request.
34. The Council stated: "Examples of the types of documentary evidence that could fall within scope of this request could include historical and archival information such as title maps, council minutes, planning documentation, Ordnance Survey maps and traffic orders. More recent records could include property deeds and building plans. This is only a

small indication of the types of information that could fall to be considered and is in no way an exhaustive list.”

35. The Council therefore set out the work which it would need to do to comply with the request, “to demonstrate the complexity around how identifying, searching for and collating this information would impose an unreasonable burden.” It stated:

“The requested information is not held on a single database, or in easily searchable files or systems. Multiple officers would need to manually trawl through what we estimate would be thousands of separate documents to identify, locate and retrieve all information that falls within scope of this request. Due to the age of the information involved it is likely that at least some information would be held in the form of paper documents, which would require additional work to locate, retrieve, and prepare for disclosure. Each document identified would require detailed analysis to ascertain if it falls within the request parameters, and if so to extract the information requested.”

36. The Council also considered that the request was only for information that had not yet been published, stating that this meant that each document identified would then have to be cross referenced, to check if it was already publicly available.
37. It noted that all of the information would need to be considered in case any redaction was necessary, and any redaction would need to be duly carried out.
38. The Council concluded that “the cost or burden of dealing with [the] request is too great and would be too burdensome and therefore as a result is manifestly unreasonable.”

**Is regulation 12(4)(b) engaged?**

39. The Commissioner notes that when the complainant requested an internal review, he made clear that he, himself, expected a wide range of information to be covered by his request. He is satisfied that the Council’s interpretation of the request, following the request for internal review, was appropriate.
40. The Commissioner considers that asking for “all the evidence... which might in any way support or have a bearing upon an application for a DMMO” is broad in scope. Since no specific DMMO had already been applied for, it is reasonable that the request necessitated enquiries being made with multiple service areas within the Council, to consider anything which may possibly have a bearing on these matters.

41. The Commissioner also agrees that a wide range of information relating to the specific location and immediate surrounding area, including plans dating back to the construction of the estate, would likely need careful consideration to determine whether there is anything which may “have a bearing” on a DMMO application, since this is a broad term.
42. Whilst the complainant evidently expected the Council to be able to readily locate information relevant to issuing a DMMO, the Commissioner is satisfied that the Council has demonstrated that this is not the case, and that a large amount of time would need to be spent in collating and considering information.
43. He is satisfied that the time it would take to do this is significantly greater than 18 hours, and so the request was manifestly unreasonable. He is satisfied that regulation 12(4)(b) is engaged.

### **The balance of the public interests**

44. Regulation 12(4)(b) is subject to the public interest test. This means that when the exception is engaged, public authorities also have to consider whether, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
45. Under regulation 12(2) of the EIR, public authorities are required to apply a presumption in favour of disclosure. Even where the exception is engaged, the information should still be disclosed if the public interest in disclosing the information is not outweighed by the public interest in maintaining the exception.
46. There will always be some public interest in disclosure to promote transparency and accountability of public authorities, greater public awareness and understanding of environmental matters, a free exchange of views, and more effective public participation in environmental decision-making, all of which ultimately contribute to a better environment.
47. As the Commissioner’s published guidance<sup>2</sup> on the application of regulation 12(4)(b) explains, the weight of this interest will vary from case to case, depending on the profile and importance of the issue and the extent to which the content of the information will actually inform public debate.

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<sup>2</sup> <https://ico.org.uk/media/for-organisations/documents/1615/manifestly-unreasonable-requests.pdf>



48. In this case, the Council believes that dealing with the request would divert important resources away from delivering services to the public. It stated: "Gathering and providing the requested information would be so burdensome that officers would need to be diverted from their core duties to devote time on locating, extracting, and collating all the information held".
49. With regard to the amount of public interest in the matter, the Council stated that it was aware that a number (between 20 and 30) of residents had petitioned the Council for the closure of the cut-through, although, after the petition had been received, no application for a DMMO had subsequently been received. The Council stated it was unsure exactly how many residents used the cut-through, although it believed it was mainly the residents of Harris Close.
50. In the Council's view, this amounted to, relatively, "very little" public interest in the matter, and consequently it stated: "To use a considerable amount of public resource in answering this request would not be in the public interest."
51. The Council pointed out that, should any individual wish to submit an application for a DMMO in this case, they would already have the benefit of "information that is already in the public domain such as planning documentation, historic information held at Cheshire Archives and Local Studies and ordnance survey information."
52. Furthermore, it suggested that "user evidence" could be gathered easily by an individual making enquiries of local people.
53. The Commissioner agrees that there is not sufficient wider public interest in this matter to justify the considerable time and effort it would take the Council to comply with the request.
54. In the absence of there being any significant public interest in disclosure, the Commissioner is satisfied that, in this case, the balance of the public interests lies in the exception being maintained.
55. Regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions. As stated in the Upper Tribunal decision *Vesco v Information Commissioner (SGIA/44/2019)*, "If application of the first two stages has not resulted in disclosure, a public authority should go on to consider the presumption in favour of disclosure... the presumption serves two purposes: (1) to provide the default position in the event that the interests are equally balanced and (2) to inform any decision that may be taken under the regulations" (paragraph 19).



56. As set out above, in this case the Commissioner's view is that the balance of the public interests favours the maintenance of the exception, rather than being equally balanced. This means that the Commissioner's decision, whilst informed by the presumption provided for in regulation 12(2), is that the exception provided by regulation 12(4)(b) was applied correctly.

## Right of appeal

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57. 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](mailto:grc@justice.gov.uk)

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

58. 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.
59. 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 .....**

**Sophie Turner**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
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