

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

Decision notice

Date: 19 April 2012

Public Authority: Surrey County Council
Address: County Hall
Penrhyn Road
Kingston upon Thames
Surrey KT1 2DN

Decision (including any steps ordered)

1. The complainants requested a business plan and related information concerning proposed changes to parking charges due to be brought in by Surrey County Council (SCC). The Information Commissioner's decision is that SCC failed to justify its application of the "manifestly unreasonable" exception and failed to respond within the statutory timescale. The Information Commissioner requires SCC to either provide an adequate refusal under the correct legislation (the EIR) or disclose the requested information.
2. SCC must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Information 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

3. On 20 February 2011, the complainants wrote to SCC and requested information in the following terms:

"1. A copy of any Business Plan prepared in respect of these proposals.

2. Any reports, research or other supporting documents in the Council's possession concerning the merits or demerits of the said proposals including internal emails and memoranda."

4. SCC acknowledged the request on 22 February 2011 and again on 22 March 2011, informing the complainants that a substantive response would be provided soon.
5. On 24 March 2011 SCC responded and stated that with regard to part one of the request, there was no approved business plan in existence. It provided five links to documents relating to the second part of the request for reports, research or internal emails.
6. On 27 March 2011 the complainants contacted SCC dissatisfied with the response. They argued that it was surprising and irresponsible that SCC did not hold a business plan at this stage regarding the proposed changes to the parking charges; and that SCC had interpreted the request in too narrow a fashion having failed to provide any additional information such as internal emails, memoranda and briefing notes.
7. On 1 April 2011 SCC contacted the complainants stating that any further related information that might be located would be provided to them as soon as possible.
8. On 7 April 2011 the complainants submitted a formal complaint to SCC regarding the lack of a substantive response which was acknowledged on the same day.
9. On 13 April 2011 SCC provided some additional information to the complainants – a Project Programme, Equalities Impact Assessment and details of income relating to parking in the boroughs and districts.
10. On 6 May 2011 SCC completed the internal review. It found that it had responded to the request late and failed to identify the information as environmental. With regard to the first part of the request (for the business plan), SCC did not uphold the complaint that information had not been provided. It argued that the business plan '*did not exist*' at the time of the request, but it did confirm that a draft report was currently being worked on at the time of the review. With regard to the second part of the request, SCC partly upheld the complaint in that information had not been provided in full. It had located further information, namely the Project Programme, Equalities Impact Assessment and details of income relating to parking in the boroughs and districts that had been supplied prior to the completion of the review on 13 April 2011. SCC did, however, state that the emails captured by the request, if requested again, would be considered to engage the exceptions regarding disclosure of internal communications, and that compliance would be manifestly unreasonable. However, with regard to its consideration of whether the request was manifestly unreasonable, SCC actually applied the costs limit as if the information fell under section 12(1) of the FOIA.

Scope of the case

11. On 7 June 2011 the complainants contacted the Information Commissioner to complain about the way their request for information had been handled. The complainants were dissatisfied with the delay involved in the response to their request and the fact that not all the information requested had been provided. They also did not accept that providing the requested emails would engage the costs limit.
12. The Information Commissioner, therefore, has investigated whether the information is of an environmental nature; to what extent information is held by SCC; and whether compliance with the request would be manifestly unreasonable.

Reasons for decision

Is the information environmental?

13. The Information Commissioner considers that the disputed information falls under the definition of environmental information as defined in regulation 2(1) of the Environmental Information Regulations 2004 (the EIR). Regulation 2(1) states that environmental information is any information in written, visual, aural, electronic or any other material form on:

“(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements...”

14. The Information Commissioner considers that the phrase ‘any information...on’ should be interpreted widely in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which

the EIR enact. In the Information Commissioner's opinion a broad interpretation of this phrase will usually include information about or relating to the measure, activity or factor in question. In view of this, the Information Commissioner is satisfied that information regarding policies and research relating to parking charges is environmental information. Therefore, all the information specified in the request is environmental under the terms of regulation 2(1)(c) of the EIR. He has concluded that, although SCC failed to handle the request under the EIR originally, it recognised that the request was for environmental information at the time of the internal review. The Information Commissioner has gone on to note that, having identified the information as environmental, SCC failed to take relevant action to handle the request appropriately.

What information was held?

Part 1: business plan

15. With regards to the requested business plan, SCC stated on a number of occasions to both the complainants and the Information Commissioner that a business plan '*did not exist*' or was '*due to be published at a later date*'. In order to understand whether SCC dealt with the request in compliance with the EIR, the Information Commissioner has attempted to ascertain to what extent or in what form a business plan regarding the proposed changes to parking charges may have been held at the time of the request.
16. SCC has not provided the Information Commissioner with a clear answer as to what exactly was held. However, in its internal review of 6 May 2011 SCC stated:

"there is no approved business plan for the on street parking charges proposals other than the cabinet member report approved on the 12 January 2011. The Council's Transport Select Committee are developing a document along these lines which will be published in early May."

The Information Commissioner therefore considers that a business plan was in fact held in draft form at the time of the request.

Part 2: reports and supporting documents

17. With regards to part two of the request, SCC identified various emails as falling within the scope of related information. At the internal review stage as noted earlier, SCC identified the requested information as environmental and this included the related emails. SCC surmised that to comply with the request would engage the costs limit as defined by the Freedom of Information and Data Protection (Appropriate Limit and

Fees) Regulations 2004 and provided the Information Commissioner with a brief breakdown of the costs which compliance would incur. SCC estimated it would take five-and-a-half days to supply the information, a total of 40 hours. SCC did not offer any explanation as to the tasks involved in supplying the information and any further breakdown of the tasks or time involved.

18. In light of the fact that SCC seemed to be inappropriately applying arguments related to section 12(1) of the FOIA to information which was in fact environmental, the Information Commissioner, in his letter of 15 December 2011, asked SCC to provide further analysis as to why it considered part two of the request to be manifestly unreasonable under regulation 12(4)(b) of the EIR, and also asked SCC for details of the public interest test it had carried out.
19. Regulation 12(4)(b) states that *"a public authority may refuse to disclose information to the extent that...the request for information is manifestly unreasonable"*. In considering whether the information engages the exception, the term "manifestly unreasonable" is interpreted more widely than section 12(1) of the FOIA.
20. In order to be deemed manifestly unreasonable, compliance with a request should mean that a public authority faces an administrative burden in terms of officers' distraction from their core functions as well as inappropriate costs. It should be noted that under the EIR there is no statutory equivalent to the 'appropriate costs limit', the 'burden' considered relates to the workload in relation to the size of a public authority, there is a greater presumption in favour of disclosure under the EIR and, linked to this, a public authority must consider the relevant public interest with regards to whether the requested information should be disclosed or withheld. The Information Commissioner has not been provided with an adequate explanation by SCC along these lines.
21. Therefore, in light of the fact that SCC did not consider the information properly under regulation 12(4)(b), the Information Commissioner finds that the refusal was not valid under the terms of the EIR.

Regulation 9 – Advice and assistance

22. Regulation 9(1) of the EIR states that

"A public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants."

23. Given that SCC considered that complying with the request for related information would be manifestly unreasonable and the fact it based this judgement on the cost it would incur in doing so, SCC had a duty under

regulation 9(1) to assist the complainants in refining their request in order to lessen the likelihood that compliance would be costly and therefore manifestly unreasonable.

24. The Information Commissioner has not been provided with evidence that SCC provided any advice and assistance to the complainants and the complainants confirmed this fact during his investigation. The Information Commissioner recognises that with regard to the duty to provide advice and assistance, a public authority is only obliged to comply with regulation 9(1) so far as it is reasonable to do so. In relation to this case, the Information Commissioner considers that it would be reasonable for SCC to engage with the complainants and work towards refining the second part of the request, particularly given that its explanation as to why regulation 12(4)(b) applied was not particularly detailed. Therefore, SCC breached regulation 9(1) by failing to provide reasonable advice and assistance with regard to the second part of the request.

Regulation 5 – time limits

25. Regulation 5(1) and regulation 5(2) of the EIR state that:

“Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request..

Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.”

26. During the course of his investigation, the Information Commissioner ascertained that SCC took longer to respond than the statutory timeframe of 20 working days. By responding only on 24 March 2011, SCC failed to comply with the 20-day timescale laid down in regulation 5(2) of the EIR.

Other matters

27. From the correspondence provided to the Information Commissioner, he notes that several of the links provided concerned information that, while helpful to the complainants, actually fell outside the scope of the request (for instance, the Local Committee Consultation report of 28 February 2011 post-dated the request of 20 February 2011).

28. The Information Commissioner also notes that SCC appeared to treat the request as an ongoing piece of correspondence, by providing information when it was completed or created that related to the request but was not captured by the scope of the original request. He would remind SCC that a request under FOIA or the EIR should address information which is held at the time of the request, albeit that a public authority may choose, as a matter of customer service or in order to discharge its obligations to provide advice and assistance, to address with the requester the issue of any information which it might come to hold in the future.

Right of appeal

29. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

30. 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.
31. 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

Jon Manners
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