

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

**Decision notice**

**Date:** 31 August 2018

**Public Authority:** Birmingham City Council  
**Address:** Council House  
Victoria Square  
Birmingham  
B1 1BB

**Decision (including any steps ordered)**

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1. The complainant requested information in relation to tree management by Birmingham City Council (the Council) for a specified period of time.
2. The Commissioner's decision is that the Council provided the complainant with all of the recorded information falling within the scope of the request which it holds, and has therefore complied with its obligations under regulation 5(1) of the EIR.
3. The Commissioner does not require the Council to take any steps.

**Request and response**

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4. On 21 September 2017, the complainant wrote to the Council and requested information in the following terms:

*"I would like to ask under the Freedom of Information Act 2000 how many trees the Council in 2015/16 and 2016/17:*

- 1. Planted (split by species and ward)*

2. *Cut down (split by species, ward, and whether the local councillors were advised of the removal or not)*
3. *For the two years above could you please advise how much it cost to plant the trees?*
4. *How many trees does the Council plan to plant, and how much is this planned to cost, in 2017/18 and 2018/19?"*
5. The Council responded on 19 October 2017 by providing some information in relation Q1 and Q2; stated that it did not hold information within the scope of Q3 and responded partially in relation to Q4 by providing the number of the trees planned to be planted but it was not able to state the costs to be incurred. In the same letter, the Council informed the complainant that it considered that the information sought fall under the definition of environmental information, therefore it had dealt with the request under the EIR.
6. On 1 November 2017, remaining dissatisfied with the response, the complainant submitted a request for internal review, accompanying it with a number of arguments in support of his request. He argued that the Council had provided information only relating to the highways department but not concerning the parks division and it did not provide details concerning costs.
7. On 24 September 2017, the Council provided the outcome of the internal review. It decided to partially uphold the complainant's appeal. The Council changed its position in relation to Q3 and provided some information, namely it stated that the contractor which manages trees in Birmingham had spent approximately £900,000 and that the Council donated £10,000 to a local charity "Birmingham Trees For Life" to plant trees in the city on behalf of the Council. However, the Council again stated that it did not hold information on separate cost elements and, therefore, was unable to provide this information.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 22 December 2017 to complain about the way his request for information had been handled. He expressed his concern that the Council was unable to provide detailed information on managing the trees in Birmingham and the Council's expenditures in this process.
9. In the course of the complainant's correspondence with the Commissioner, on 15 May 2018 the complainant confirmed that he still

considered that *"No information has been released in relation to contracted out services for highways tree planting costs and no information has been released in relation to parks department tree planting."*

10. The Commissioner has focused her investigation on examining whether the Council was correct when it stated that it had provided all the information it held and held no further information falling within the scope of the complainant's request.

## Reasons for decision

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### Is the requested information environmental information?

11. Regulation 2 of the EIR states that:

*"environmental information" has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on—*

*(a) the state of the environment, such as air and atmosphere, water, soil, land and landscape and natural sites including wetlands...*

*(b) factors, such as substances, energy, noise, radiation or waste, emissions...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...and activities affecting or likely to affect the elements and factors referred to in (a) and (b)...".*

12. The Commissioner considers that, given that the request relates to management of trees within the Council's territory, it falls under the EIR.

### Regulation 5(1) – duty to provide environmental information

13. Regulation 5(1) of EIR provides that a public authority that holds environmental information shall make it available on request.
14. In cases where a dispute arises over the extent of the recorded information held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. She will also consider the actions taken by the public authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. The

Commissioner will also consider any reason why it is inherently likely or unlikely that information is not held.

15. The Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.<sup>1</sup>

### ***The complainant's position***

16. The complainant considers that the Council did not address his information request appropriately. He maintains that the questions included in his request were not answered properly.
17. Consequently, the complainant maintains that the Council must be in possession of information beyond what was already provided and states that he is entitled to have access to this information.

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

18. The Council maintains that it has provided to the complainant all the information that it held, within the scope of the information request.
19. Initially, the Council explained that the responsibilities for the management of trees in Birmingham are split between Sports/Events and Parks Division of the Council (Parks Division) and a private contractor Amey Birmingham Highways Limited (ABH Ltd).

#### *Information related to trees planted and felled by the Parks Division*

20. In the outcome of its internal review, the Council explained to the complainant that in the course of its daily activities, the Council *"...regularly carries out the felling of areas of self-set trees as groups so individual tree numbers are not recorded."* In addition the Council stated that it does not hold information related to the number of planted trees by the Council for the period between April 2015 and March 2016.
21. The Commissioner invited the Council to revisit this matter and provide an updated response on the searches conducted to retrieve this information.
22. The Council informed the Commissioner that the Parks Division carried out searches on its electronic system *"Parks Operational Performance Information"* using the reference numbers of the enquiries raised by the complainant regarding planted and felled trees. These searches

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<sup>1</sup> This approach is supported by the Information Tribunal's findings in *Linda Bromley and Others / Environment Agency* (31 August 2007) EA/2006/0072

conducted by Parks Division did not result with additional information further to what was already provided to the complainant. Therefore, the Council reconfirmed that it does not hold information related to planted and felled trees in the areas under the responsibility of Parks Division.

23. The Council confirmed that no information falling within the scope of this request was destroyed or deleted from its system. In addition, the Council explained that its retention policy requires retaining the records *"until conclusion of administrative use."*

*Information related to the costs for highways trees planted*

24. The Council initially explained that it does not hold this information, explaining that the Council has contracted out highway maintenance and management services under a Private Finance Initiative Contract. Maintenance and management of highway trees is part of the contract with the AHB Ltd. Thus, as provided by the contract, the Council pays a single *Annual Unitary Charge* and does not hold information specifically about expenses related to planting of trees in highways.
25. Upon the Commissioner's intervention, the Council contacted AHB Ltd to ascertain whether it holds the requested information on behalf of the Council.
26. The Council explained that AHB Ltd conducted searches in its internal *"Management Information Systems"*, which did not retrieve any relevant information. Further, the Council confirmed that AHB Ltd did not delete or destroy any information within the scope of the request.
27. In addition, AHB Ltd stated that *"Under the Terms of our Sub-Contract tree felling and planting is part of our annual Operational Service Fee, thus we have no need to cost the work separately to the Service activities and therefore are unable to provide information requested."*

***The Commissioner's conclusion***

28. The Council has informed the Commissioner of the relevant searches for recorded information it has undertaken.
29. Whilst the Commissioner recognises that the complainant does not consider that the Council has fulfilled the request, it has provided a clear explanation of the searches that underlay its responses. No evidence is available to the Commissioner that indicates that the Council's searches and efforts to comply with the request have been insufficient, or that further recorded information is held.
30. In conclusion, the Commissioner has considered the searches performed by the Council, the amount of information provided, the Council's

explanations as to why there is no further information held and the complainant's concerns. On the balance of probabilities, the Commissioner considers that the Council does not hold any further information to that already provided in relation to the complainant's information request.

## Right of appeal

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31. 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)

32. 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.
33. 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**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**