

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

Date: 3 January 2025

Public Authority: Malvern Hills District Council
Address: The Council House
Avenue Road
Malvern
WR14 3AF

Decision (including any steps ordered)

1. The complainant requested information about a specific tree. Malvern Hills District Council (the "Council") disclosed some information and withheld other information under the exceptions for internal communications (regulation 12(4)(e)) and commercial confidentiality (regulation 12(5)(e)). During the Commissioner's investigation the Council revised its position, disclosing the information previously withheld under regulation 12(5)(e) and confirming that the information withheld under regulation 12(4)(e) fell outside the scope of the request.
2. The Commissioner's decision is that the Council disclosed all the information falling within the scope of the request and complied with regulation 5(1) but that it disclosed the information previously withheld under regulation 12(5)(e) outside the time for compliance and breached regulation 5(2).
3. The Commissioner does not require further steps.

Request and response

4. On 24 June 2024 the complainant asked the Council for the following information:

"Please can we have copies of emails between [redacted] and [redacted] during February and March 2024.

The search terms in [redacted] emails should individually be: [redacted] "Uckinghall".

The following email addresses should be searched:

[redacted]"

5. The Council responded on 19 July 2024 and disclosed information. It confirmed that some third party personal information had been redacted and other information was being withheld under the exceptions for internal communications (regulation 12(4)(e)) and commercial confidentiality (regulation 12(5)(e)).
6. Following an internal review the Council wrote to the complainant on 5 August 2024. It stated that it was maintaining its position.

Scope of the case

7. On 5 September 2024 the Commissioner wrote to the complainant and confirmed receipt of their complaint about the Council's handling of their request.
8. On 17 December 2024 the Council provided the complainant with the information previously withheld under regulation 12(5)(e). The only outstanding information was that being withheld under the exception for internal communications (regulation 12(4)(e)).
9. The Commissioner confirmed with the complainant that his investigation would consider whether the Council had correctly withheld the outstanding information under regulation 12(4)(e).
10. After an initial consideration of the withheld information it occurred to the Commissioner that none of this appeared to fall within the scope of the request. Two of the withheld emails consist of correspondence between parties other than those identified in the request and the third withheld email falls outside the timeframe set in the request. The Commissioner, therefore, suggested to the Council that the entirety of the outstanding information was outside the scope of the request.

11. The Council confirmed to the Commissioner that it agreed with the Commissioner's assessment and confirmed that it held no further information falling within the scope of the request.
12. The Commissioner has set out his conclusions on this matter below.

Reasons for decision

Is the requested information environmental?

13. Regulation 2(1) of the EIR defines environmental information as being information 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)...as well as measures or activities designed to protect those elements;
 - (d) reports on the implementation of environmental legislation;
 - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
 - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);
14. In this case, the requested information relates to decisions taken in relation to the management of a tree. The Commissioner is satisfied that

the information relates to measures as defined in regulation 2(1)(c). For procedural reasons, he has, therefore, assessed this case under the EIR.

Regulation 5 – duty to provide environmental information

15. Regulation 5(1) provides that a public authority that holds environmental information shall make it available on request.
16. Under regulation 5(2), environmental information should be provided within 20 working days of the date of receipt of the request.
17. In this case the Council disclosed information identified in the request and initially confirmed that further information was being withheld under the exception in regulation 12(4)(e).
18. As noted above under paragraphs 12-14 of this notice, the Commissioner's initial view was that the withheld information fell outside the scope of the request as it did not consist of correspondence between the parties named in the request and did not fall within the timeframe set in the request. The Council subsequently confirmed that this was correct and that the exception in regulation 12(4)(e), therefore, was disapplied.
19. In addition to confirming that the formerly withheld information was excluded from the scope of the request, the Council also confirmed that it held no further information falling within the scope of the request. The Commissioner has no evidence to contradict the Council's position and has decided that, on the balance of probabilities, the Council has disclosed all the information it holds that is relevant to the terms of the request and complied with regulation 5(1).
20. However, the request was submitted on 24 June 2024 and on 17 December 2024 the Council disclosed information to the complainant which it had previously withheld under the exception in regulation 12(5)(e). In respect of this, the Commissioner finds that the Council breached regulation 5(2). He does not require the Council to take any further steps.

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.

Christopher Williams
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF