

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

Decision notice

Date: 25 September 2014

Public Authority: Liverpool City Council
Address: Legal Services
Municipal Buildings
Dale Street
Liverpool
Merseyside
L2 2DH

Decision (including any steps ordered)

1. The complainant has requested information relating to environmental health and safety issues held about certain domestic properties in Liverpool over the last ten years. The council provided the complainant some information outlining various complaints which had been made to it about the properties. It said that this was all of the information which the council holds. The complainant however said that further information must be held. Following the intervention of the Commissioner further information was located and disclosed to the complainant, however some sections were redacted under section 40(2) of FOIA. The complainant did not raise the redactions of names as an issue and so this has not been considered further. However he considers that further information must still be held by the council.
2. The Commissioner's decision is that the information is environmental information which should have been considered under the terms of the EIR. He has decided that on a balance of probabilities the Council has provided all of the information which it holds to the complainant.
3. The Commissioner has however decided that the council did not comply with the requirements of Regulation 5(2) in that it failed to provide the

information to the complainant within the time period of twenty working days.

4. The Commissioner does not require the authority to take any steps.

Request and response

5. On 2 December 2013 the complainant wrote to the council and requested information in the following terms:

"All information relating to environmental health and safety issues for the previous 10 years relating to all Baker Properties premises located between 20 and 40 Warbreck Moor, Liverpool including the premises 31 to 37 Warbreck Moor."

6. The council responded on 31 December 2013 providing a list of complaints it had received against relevant properties falling within the scope of his request.
7. On 2 January 2014 the complainant wrote to the council and said that he considered its response to be a refusal to comply with the requirements of the Act. The council took this to be a request for review and wrote to the complainant on the same day asking him to clarify the nature of his request for review – it said that it did not understand in what respects he considered the council had not complied with his request.
8. The complainant responded on the same date providing further information on his review request. He clarified that his specific request was for:

"I requested ALL information held in regard to environmental health, and safety issues relating to (after clarification) Baker Properties' property 31-37 Warbreck Moor in the building comprised of 2 floors of 6 residential flats above the commercial premises (not Baker Properties') 'Hargreaves Wine Bar'/'The Saddle Bar' and having their entrance door and hallway adjacent to those premises."

9. The complainant clarified that that he had asked for 'all' information relating to the premises. He said that the council's response did not provide him with copies of any material or papers etc relating to the complaints.
10. The council then responded, again on the same date, saying that not all complaints were made to it in writing and asked the complainant whether he wished to make a new request.

11. The complainant then wrote back on 3 January 2014 asking why the response was only related to complaints – he reiterated that his request was for 'all' information.
12. On the same date the council wrote back saying that the request was unclear and that it could not progress the complaint without further clarification.

Scope of the case

13. The complainant contacted the Commissioner 3 January 2014 to complain about the way his request for information had been handled. He said that the council's responses were a deliberate attempt not to comply with the Act.
14. The Commissioner considers that the complaint is that the council has failed to identify and locate all of the information falling within the scope of his request (as clarified) and disclose it. The complainant has also complained that his request for review was clear and that the council had no grounds to refuse to carry out a review.

Reasons for decision

Is the information environmental information?

15. The Commissioner has firstly considered whether the information is environmental information for the purposes of the EIR. The information relates to any environmental health and safety issues at premises in a set of buildings in Liverpool.
16. The disclosed information relates to details of complaints made about noise, issues with electrical supplies, fire precautions and mould and infestation.
17. Regulation 2(1)(f) provides that:

(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);

18. Regulation 2(1)(a) provides that:

(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;

19. The Commissioner is satisfied that the information falls within the scope of the EIR. It is information on the state of human health and safety and the conditions of human life insofar as they are affected by the elements outlined in (a). The relevant factors in (a) include built structures and biological diversity and its components.

Is any further information held?

20. Regulation 5(1) of the EIR says 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.

21. Regulation 12(4)(a) provides that:

(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that -

(a) it does not hold that information when an applicant's request is received;

22. The Commissioner wrote to the council on 28 May 2014. He said that his view was that the complainant's request for review was clear and that the council should have provided a response to the complainant.

23. He also gave examples of information which the council may not have considered as falling within the scope of the complainant's request, such as letters of complaint from the public, officers telephone records, and letters informing occupants of actions being considered by council. He therefore asked the council to reconsider its response taking this sort of information into account.

24. The Commissioner clarified to the council that it was possible that some of this information may need to be redacted or may be exempt in its entirety, however the council was still under a duty to confirm whether further information was held or not unless it could apply an exemption which allowed it to neither confirm nor deny that information was held.

If that was the case then the council needed to confirm this to the Commissioner and provide its reasons for doing so.

25. The council responded on 17 June 2014 explaining the searches it had carried out and confirmed that all of the information which it held had been provided to the complainant. It provided a detailed description of the searches it had carried out and explained that no further information was held.
26. Having considered the nature of the information which was requested, together with the information which had been disclosed to the complainant, the Commissioner was not satisfied that all of the information which the council holds had been located or considered for disclosure. It was clear to him that records of complaints, or actions taken by officers would have been held at some point. He therefore considered that either this information would still be held or that a record of the information being destroyed should be held by the council (presumably in line with its records management policies).
27. The Commissioner therefore wrote back to the council on 18 June 2014 and asked it to explain its administrative processes once it received a complaint from a member of the public. He asked it to explain what would happen to any physical letters the council received, whether they would be stored or destroyed, how they would be stored and for what period of time they would be held. He also asked the council whether officers made telephone notes or wrote letters involving complaints, and if so, what would happen to copies of these.
28. The council responded on 20 June 2014. It explained the processes which the council has when correspondence is generated or received on a complaint. It said that all relevant information is placed on to an 'M3 worksheet' which is generated separately for each complaint. All correspondence is then attached to the relevant worksheets. Physical letters which are received are scanned onto the electronic systems and attached to the worksheet. It further explained that there had been a number of changes of system over the last ten years and it was aware that some data may have been lost due to the changeovers.
29. In spite of the above response, the council did not clarify whether any further information falling within the scope of this request was held on its files.
30. The Commissioner therefore telephoned the council information officer on the same day and asked him to confirm whether the council's response was therefore that no further information is held. He pointed out that the complainant had only received an excel sheet listing the

details of complaints made, and said that the councils response had not clarified whether all relevant information had been located.

31. The Commissioner pointed out that the complainant had only been provided with received an excel list of the complaints rather than a copy of the relevant worksheet with any associated documentation. The worksheet would fall within the scope of the request, as would any documentation held on it. The Commissioner therefore asked the council to confirm whether any worksheets were held relating to the relevant complaints or whether its argument was that the excel sheet was the worksheet, and therefore that no further documentation is held. The Commissioner also wrote to the council on 20 June 2014 asking the same questions.
32. The council responded on 14 July 2014 stating that it had subsequently found that further information was held. It therefore disclosed further information to the complainant on the same date. This information included copies of complaint records and letters and internal mail relating to complaints. Redactions were made to personal data held within the documents and this is considered below.
33. The complainant wrote to the Commissioner confirming that he had received the information and would consider informally withdrawing his complaint. However he wrote again to the Commissioner on 29 July 2014 stating that after further investigation he considered that the council would hold further information.
34. The Commissioner asked the complainant to provide further details in order to facilitate him writing back to the council. The complainant responding saying that "*A number of either legislative or significant guideline documents were produced during the identified period. Comments made by others referring to specific structural changes to be made to the subject property suggest documents exist relating to those legislative or guideline papers.*"
35. The Commissioner wrote back to the complainant asking him to clarify what he meant by this in order to aid him to direct the council to make further searches. The complainant however did not do so. He said that he considered the council's response was a token response only and that he considered the Commissioner's office had not properly investigated his complaint if it considered that all information had now been provided.
36. The Commissioner accepts that the council's responses to both the complainant and the Commissioner were initially inadequate. He considers that the searches which were carried out lacked appropriate levels of consideration and demonstrate, at the least, a cursory

consideration of the request and the Commissioner's initial questions. This resulted in incorrect responses being provided to both the complainant and to the Commissioner.

37. However the council's description of the administrative processes which it uses indicates that the searches which it subsequently conducted as a result of the Commissioner's prompting seem appropriate and would locate the information which the complainant was seeking. All complaints result in the creation of a worksheet and all documents associated with the relevant worksheets are loaded onto the electronic case file. The council said that it has now disclosed all information from the worksheets to the complainant.
38. The Commissioner is satisfied that the information held within the worksheets by the council has now been provided to the complainant, with suitable redactions having taken place. It appears to him, following all of the descriptions provided by the council, that no further information would be held.
39. Without a further explanation of the information which the complainant considers should still be held the Commissioner is not able to take the complainant's concerns forward other than by ordering a further general search by the council. The council has however said that all relevant information is held on the work files and so the value of such a search would appear negligible.
40. Having considered the above, and in the absence of further clarification from the complainant as to what further information he considers must still be held the Commissioner has decided that on a balance of probabilities no further information is held by the council.

Regulations 12(3) & 13

41. The council redacted names of some of its officers and the names of people who had contacted it to make a complaint about various issues under section 40(2) of FOIA. Although the Commissioner considers that the information is environmental information Regulation 12(3) and Regulation 13 provides the equivalent exception to section 40(2). In this case the Commissioner has used his discretion to consider this equivalent exception in place of section 40(2).
42. The complainant did not raise any issue with the redactions with the Commissioner and so the Commissioner has not considered the application of the exemption in depth.
43. For the absence of doubt however he considers that it was appropriate for the council to redact the names of members of the public who had had contact with the council regarding the properties concerned. A

disclosure of such information would be unfair for the purposes of the first data protection principle and there is no pressing social need for that information to be disclosed to the whole world.

44. A disclosure of this information would therefore be exempt under the provisions of Regulation 13 of the EIR.

Regulation 5(2)

45. Regulation 5(2) provides that:

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."

46. The complainant made his request for information to the council on 2 December 2014. The council did not however respond to the complainant providing the information he had requested to him until 14 July 2014. This fall outside of the period of 20 working days required by Regulation 5(2).
47. The Commissioner is therefore satisfied that the council did not comply with the requirements of Regulation 5(2).

Right of appeal

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

Website: 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
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