

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 25 September 2018

Public Authority: Sheffield City Council

Address: Town Hall
Pinstone Street
Sheffield
S1 2HH

Decision (including any steps ordered)

1. The complainant requested information about various engineering solutions used to maintain trees in accordance with a specified tree management plan. Sheffield City Council (the 'Council') cited regulation 12(4)(b) of the EIR to refuse the request, on the grounds that it was manifestly unreasonable, due to the significant burden it would impose on the Council in terms of cost.
2. The Commissioner's decision is that the Council was entitled to apply regulation 12(4)(b) to refuse the request. She finds that the public interest lies in maintaining the Council's application of this exception.
3. However, she also finds that the Council breached regulation 11 of the EIR by failing to carry out an internal review within the statutory 40 working days' time limit.
4. No steps are required.

Background

5. In August 2012, the Council entered into a private finance initiative 'Streets Ahead' contract with Amey Hallam Highways Ltd ('Amey'), an infrastructure support service provider, to maintain the city's roads, pavements, street lights and highway trees. The contract allowed for the felling of highway trees, where necessary.

6. Some local residents consider that healthy trees are being felled unnecessarily and there has been considerable, active opposition to the Council's tree-management programme, with protest groups interested in learning more about any plans to remove local trees.¹

Request and response

7. On 11 January 2018, the complainant wrote to the Council and requested information in the following terms:

"Cllr [name redacted], stated in writing to me on 09/01/18, regarding city-wide street trees saved from felling within Amey contract "Every tree that has been retained has been as a result of some form of engineering solution."

There are 14 Engineering Solutions which under the terms of the contract can be used with no extra costs to the people of Sheffield.

In order to see evidence of this I would appreciate receiving Streets Ahead work sheets listing the location of these trees and engineering solution applied. Other data, for example a spreadsheet or list would also be satisfactory."

8. The Council responded on 22 January 2018. It said that while it held information falling within the scope of the request, it was not held in a centrally collated or electronically searchable format. It said that the resources necessary to locate and extract the information would be excessive and therefore that it was refusing to comply with the request on the grounds that regulation 12(4)(b) (manifestly unreasonable request) of the EIR applied.
9. The complainant requested an internal review on 9 February 2018. The Council provided the outcome of the review on 11 April 2018. It upheld its response in respect of the request.

Scope of the case

¹ See <https://www.economist.com/britain/2017/08/10/tree-fights-in-sheffield>

10. The complainant contacted the Commissioner on 2 May 2018 to complain about the decision to refuse her request.
11. The Commissioner has considered whether the Council was entitled to rely on regulation 12(4)(b) of the EIR in relation to the request and whether the balance of the public interest favours maintaining the exception. She has also considered the time it took to conduct an internal review of its decision.

Reasons for decision

12. The request in this case is very similar to another request for information to the Council which the Commissioner recently considered under reference FER0741644, and for which a decision notice was issued in August 2018². The Council referred the Commissioner to that case, in its response to her enquiries.
13. Having considered all the factors applicable to this case, the Commissioner is satisfied that the similarity between the request and the arguments submitted in this case and in case reference FER0741644 is such that she is able to reach the same decision about the citing of regulation 12(4)(b) and regulation 9 (advice and assistance) of the EIR.
14. For brevity, the Commissioner will not reproduce the content of that decision notice here but she has adopted the same analysis and concluded that the Council was entitled to rely on regulation 12(4)(b) to refuse to comply with the request, with there being no breach of regulation 9.

Regulation 11 – Representations and reconsideration

15. Under regulation 11 of the EIR: "*an applicant may make representations to a public authority in relation to the applicant's request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request*".
16. In other words, the EIR include a statutory right for applicants to request an internal review. The public authority then has 40 working days in which to carry out its internal review.

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2259627/fer0741644.pdf>

17. In this case, the complainant requested an internal review on 9 February 2018 which the Council did not complete until 11 April 2018. This is a total of 41 working days.
18. By failing to carry out an internal review within the statutory time limit of 40 working days, the Commissioner finds that the Council breached regulation 11 of the EIR.

Right of appeal

19. 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

20. 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.
21. 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

Samantha Bracegirdle
Senior Case Officer
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Wycliffe House
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SK9 5AF