

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

Decision notice

Date: 20 December 2018

Public Authority: Beeford Parish Council
Address: 9 Parklands
Main Street
Beeford
Driffield
Yorkshire
YO25 8EY

Decision (including any steps ordered)

1. The complainant has requested information from Beeford Parish Council ("the Council") concerning the installation of a bus shelter in the parish. This included a copy of the papers circulated to councillors ahead of a closed meeting in which concerns related to the specific bus shelter installation was discussed. The Council had responded to the majority of the request however it had withheld some information and advised that it was not in the public interest to publish the remainder of the request.
2. The Commissioner's decision is that as the request relates to the installation of a bus shelter and some health and safety concerns the complainant had, which would indirectly impact the environment, the request should be assessed and responded to under the EIR rather than the FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - Reconsider the request under the provisions of the EIR and issue a fresh response to the complainant.

4. The Council must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the 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

5. On 12 April 2018, the complainant wrote to the Council and requested information in the following terms:

"Further to my attendance at the last Parish Council Meeting on the evening of the 9th April 2018. I would first like to thank you for the opportunity to address the Parish Council and read the email we had received from [name redacted] on Thursday the 5th April. Further to me leaving a copy of the above mentioned email and Stage 3 Road Safety Report audit that was carried out on 8th March 2018 and my FOI request for a copy of the paperwork circulated the Parish Council on this matter, I would also appreciate copies of the following information (as a formal FOI request):

- *A full copy of the papers circulated the Parish Council and reviewed in the closed meeting prior to the 7pm Parish Council Meeting as indicated by the Chairman, it would be useful for me to be sighted of all the facts.*
- *A full copy of the draft or full Safety Audit report outlined to the Parish meeting members (undertaken on the 29th March 18)*
- *A full copy of the Parish Council annual summary as read out by the Chairman*
- *A full copy of the Chairman's statement under Item 4. Matters Arising a. Bus Shelters and d. Village Walkabout report*

You kindly indicated to me that the paperwork can be provided once the minutes have been drafted (NALC? rules – I have struggled to find these, so your assistance, hyperlink, locating these rules would be useful) and that this would be about two weeks. Can I also request a copy for the draft minutes as well."

6. The Council responded on 13 April and 9 May 2018. It provided some information and stated that other information will be available on the Council's website. It also advised that as the copies of papers that circulated the Council's councillors were marked Private and Confidential, it would not release this to the complainant.

7. Following an internal review the Council wrote to the complainant on 11 September 2018. It stated that the *"complaint was being dealt with under the provisions of the Freedom of Information Act 2000"* and that it was refusing the request on *"the basis of it not being in the Public Interest."*

Scope of the case

8. The complainant contacted the Commissioner 26 June 2018 to complain about the way his request for information had been handled.
9. On 11 September 2018, the Council completed an internal review advising that it *"was being dealt with under the provisions of the Freedom of Information Act 2000"* and that it was maintaining its position to say that it would not be in the public interest to release the information to the complainant as the *"public interest in maintaining confidentiality outweighs the public interest in disclosing the information."*
10. The Commissioner's decision in this case relates only to the appropriate access regime, that is, whether the requested information falls to be considered under the EIR or the FOIA. The Commissioner has made no decision as to whether the requested information should be disclosed, since the issue of the appropriate access regime must be resolved first.

Reasons for decision

Regulation 2: Environmental Information

11. Regulation 2(1) of the EIR defines environmental information as being 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)...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);*
- f) *the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and and built structures inasmuch as they are or may be affected by the state of elements of the environment referred to in (b) and (c);"*
12. It is important to ensure that requests for information are handled under the correct access regime. This is particularly important when refusing to provide information, since the reasons why information can be withheld under FOIA (the exemptions) are different from the reasons why the information can be withheld under the EIR (the exceptions). In addition, there are some procedural differences affecting how requests should be handled.
13. The Commissioner recognises that it can sometimes be difficult to identify environmental information, and has produced guidance¹ to assist public authorities and applicants. The Commissioner's well established view is that public authorities should adopt a broad interpretation of environmental information, in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact.
14. By way of background, the Commissioner notes that the information which has been requested has been labelled by the Council as Private and Confidential however it has informed the complainant that it was "*an internal chronological report of events/obstructions which involved the police, leading up to and during the installation of the bus shelter*".
15. The Council has informed the Commissioner that it is surprised to hear that the requested document related to factors concerning the environment as this was never the indication that the Council gave and the complainant never indicated this factor in his emails.

¹
https://ico.org.uk/media/fororganisations/documents/1146/eir_what_is_environmental_information.pdf

16. The Commissioner, however, has considered the report in light of the definition at regulation 2 of the EIR.
17. The Commissioner's interpretation of the phrase 'any information... on' is that it will usually cover information concerning, about, or relating to the measure, activity, factor etc. in question. It is not necessary for the information itself to have a direct effect on the elements of the environment, or to record or discuss such an effect.
18. The Commissioner has considered the purpose and contents of the information request. The Council informed the complainant that the information was a statement from the Chairman regarding the events leading up to and during the installation of a bus shelter.
19. As previously explained at paragraph 17 and in line with her guidance, referenced previously, the Commissioner does not consider that the requested information has, in itself, to have a direct effect on the elements of the environment in order to be environmental.
20. The Commissioner is satisfied that the information contains written information on measures - specifically, activities - affecting or likely to affect the state of the elements of the environment, specifically, soil, land and landscape. She is also satisfied that there is a health and safety aspect relating to the requested information.
21. The Commissioner's decision is that the report therefore falls within the definition of environmental information at regulation 2(1)(c) and 2(1)(f) of the EIR and she orders the Council to make a fresh response to the complainant's request of 12 April 2018 under the provisions of that legislation.

Other matters

22. Although they do not form part of this decision notice the Commissioner would like to record the following matters of concern.
23. Paragraph 1 (page 8) of the code of practice issued under regulation 16 of the EIR (the "EIR code")² states:

"All communications to a public authority, including those not in writing and those transmitted by electronic means, potentially amount to a request for information within the meaning of the EIR, and if they do they must be dealt with in accordance with the provisions of the EIR. It is therefore essential that everyone working in a public authority who deals with correspondence, or who otherwise may be required to provide information, is familiar with the requirements of the EIR and this Code in addition to the FOIA and the other Codes of Practice issued under its provisions, and takes account of any relevant guidance on good practice issued by the Commissioner. Authorities should also ensure that proper training is provided."

24. Paragraph 56 of the EIR code states:

"Where a request for information is refused or partially refused in accordance with an exception, the EIR requires that the authority notify the applicant which exception has been claimed and why that exception applies. Public authorities should not unless the statement would involve the disclosure of information which would itself be withheld in accordance with the EIR merely paraphrase the wording of the exception. They should state clearly in the decision letter the reason why they have decided to apply that exception in the case in question. The EIR also requires authorities, when withholding information, to state the reasons for claiming that the public interest in maintaining the exception outweighs the public interest in disclosure. Public authorities should specify the public interest factors (for and against disclosure) that they have taken into account before reaching the decision (again, unless the statement would involve the disclosure of information which would itself be withheld in accordance with the EIR). They should also include details of the complaints procedure."

2

https://ico.org.uk/media/fororganisations/documents/1644/environmental_information_regulations_code_of_practice.pdf

25. The Commissioner notes that the Council's initial handling of this request was refused under the FOIA but had failed to provide the complainant with legitimate reasons for withholding the requested information. In view of the Council's practice in these regards, the Commissioner has concerns that it might not understand its obligations under the EIR. If the Council was to offer a similar response under the EIR, it would be not be compliant.
26. Therefore the Commissioner considers that, in future, the Council will ensure that requests for information are handled in accordance with the statutory obligations set out in the EIR and that its practice will follow the recommendations of the EIR code.

Right of appeal

27. 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

28. 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.
29. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF