

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 26 October 2023

Public Authority: Stockton-on-Tees Borough Council
Address: Municipal Buildings
Church Road
Stockton-on-Tees
TS18 1LD

Decision (including any steps ordered)

1. The complainant originally requested, from Stockton-on-Tees Borough Council (the Council), information not available on the planning portal about a specific planning application. The Council refused to disclose any information, citing regulations 5(3) and 13(1) (personal data), 12(4)(e) (internal communications) and 12(5)(f) (interests of the person who provided the information). Following the Commissioner's intervention, the Council ultimately issued a revised response to the request, disclosing information and saying the only information now being withheld is the personal data of third parties. The complainant has not disputed the withholding of third party personal data but does not accept that the Council has disclosed all of the information to which they are entitled.
2. The Commissioner considers that, on the balance of probabilities, the Council does not hold any further information falling within scope of the request.

3. However he finds a breach of regulation 5(2) of the EIR regarding some information that was not disclosed until the Commissioner's investigation.
4. The Commissioner does not require any further steps as a result of this decision notice.

Request and response

5. The complainant wrote to the Council and requested information in the below terms. Whilst the complainant did not send the Commissioner a copy of their request, the request was quoted in the Council's response, and the Council said it received the request on 2 November 2022:

"In relation to Planning Application [details redacted] ...

- Please may I request recorded information (Not available on the planning portal) which includes information held on computers, in emails and in printed or handwritten documents as well as images, video and audio recordings".
6. The Council responded on 10 November 2022. It refused to disclose any information, citing regulations 5(3), 13(1), 12(4)(e) and 12(5)(f).
 7. Following an internal review, the Council maintained its refusal.

Scope of the case

8. The complainant originally contacted the Commissioner on 10 January 2023 to complain about the way their request for information had been handled.
9. They disagreed with the Council's refusal to disclose any documents.
10. They said "[u]ndisclosed documents are known to be available ...", such as photographs and text used by a case officer during a presentation.
11. The Commissioner exchanged some correspondence with the complainant and the Council. He has outlined some of that correspondence below, because he considers it will help to explain how the nature of the complaint has evolved, and what he does and does not intend to address in this decision notice.
12. The Commissioner wrote to the Council with some initial comments and seeking further details.

13. He asked whether the Council held the “photographs and text” specified by the complainant, because the Commissioner had not seen that information among the withheld information the Council had sent him.
14. He explained that he was likely to agree with the application of regulations 5(3) and 13(1) to refuse disclosure of the complainant’s own personal data and that of third parties, under the EIR. He noted the Council’s intent to treat the issue of the complainant’s own personal data as a subject access request under data protection legislation, as his guidance advises¹.
15. He also queried some aspects of the Council’s handling of the request, especially in relation to regulations 12(4)(e) and 12(5)(f).
16. The Council agreed to reconsider matters and said that more information would be disclosed, including the presentation referenced by the complainant.
17. The Council issued a revised response to the complainant on 7 July 2023, and explained that the only information being withheld is the personal data of third parties under regulation 13(1).
18. However, on 31 July 2023 the complainant contacted the Commissioner to say that contrary to its revised response, the Council had not disclosed the information previously withheld. They said “[t]he information provided falls a long way short of what you would expect to see ...”. They also said they did not require the personal data of third parties.
19. On 8 August 2023, the complainant said the presentation referenced above had not been disclosed, as far as they could tell.
20. The Commissioner asked the complainant to specify any further information or documents they seek, as far as they are able to.
21. He also wrote to the Council about the complainant’s latest correspondence. He asked for a copy of the information disclosed with the Council’s revised response, so that he could see for himself what had been disclosed.
22. After seeing that information, the Commissioner considered the Council had disclosed information previously withheld, and explained this to the

¹ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/guide-to-the-environmental-information-regulations/refusing-a-request/#when-can-we-refuse-a-request-for-environmental-information-1>

complainant. He also suggested that the disclosed information included the presentation mentioned in the complaint of 10 January 2023.

23. Furthermore he noted the complainant is not seeking the personal data of third parties, and stated his understanding that the complainant is not challenging the application of regulation 13.
24. Given the circumstances outlined in paragraphs 22 and 23 above, and the fact that the complainant had not specified what further information they believe is held, the Commissioner questioned the benefit in pursuing the matter any further. He gave the complainant the opportunity to respond, and to clarify their grounds of complaint at this stage. In particular, if the complainant's concern was that further information is held, the Commissioner asked the complainant to specify what.
25. In response, the complainant said:

"The information provided fails to include, reports from agencies such as the Lead Flood Authority ... it is important that all reports from all the agencies, statutory partners and council officials' [sic] are disclosed. We are unable to state exactly which agencies have contributed and had their reports withheld from the public. But there are many when [planning application details redacted] are submitted".
26. The complainant's focus is clearly on "reports", and they give the "Lead Flood Authority" as an example.
27. The Commissioner therefore considers that the scope of this decision notice is to decide whether the Council holds any further information falling within scope of the request. He will also address the issue of the time taken by the Council to disclose the presentation the complainant mentioned in their original complaint.
28. The Commissioner does not intend to look at the Council's citing of regulations 12(4)(e) and 12(5)(f) of the EIR as this information has now been disclosed.
29. The Commissioner highlights that the complainant has not disputed that the presentation mentioned in the original complaint has now been disclosed; and is not challenging the Council about regulation 13 (see paragraphs 22 and 23 above). He also notes that the complainant is not complaining about the Council's citing of regulation 5(3).

Reasons for decision

Regulation 5(1) – duty to make environmental information available on request

30. Regulation 5(1) provides that a public authority that holds environmental information shall make it available on request. This is subject to any exceptions that may apply.
31. As the Commissioner's guidance² notes, there will be occasions where a requester disputes whether a public authority has provided all the environmental information it holds. In such circumstances, it is important for the public authority to demonstrate that it has carried out reasonable searches.
32. The guidance also explains that caselaw has determined it is acceptable for the Commissioner to rely on the results of a public authority's searches, providing that those searches were appropriate and thorough.
33. The Commissioner is not required to prove beyond doubt that a public authority does or does not hold further information. When determining a complaint, the Commissioner makes a decision based on the civil standard of the 'balance of probabilities' – that is, more likely than not.
34. In this case, the Commissioner wrote to the Council, quoting the complainant's comments at paragraph 25 above and directing the Council to guidance and 'Key Questions for Public Authorities' on his website, about determining whether environmental information is held.
35. The Council's responses indicate that it approached the relevant individuals.
36. It confirmed "there are no other documents we hold to be released".
37. It explained it has reviewed the planning file and all information on that file relating to consultees and their responses, and said none of the correspondence contains "any further reports or technical assessments".
38. In addition, it said, laptop and email searches were performed, using search terms relating to the planning application file reference number

² <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/determining-whether-we-hold-environmental-information/>

and address in the wording of the complainant's request of 2 November 2022. It confirmed "no such reports were found".

39. The Council explained that the reports, if held, would be held electronically rather than in paper form, because for a number of years the planning department had scanned and stored documents electronically, even before receiving the application that is the focus of the request. It therefore confirmed there are no relevant paper records.
40. The Commissioner considers that the Council understands the type of further information being sought by the complainant, and that its responses indicate that the Council has conducted reasonable searches.
41. The complainant has only stated relatively generic reasons for believing that further reports are held. For example, they said the disclosed information is "... short of what you would expect to see ...", and made the general point that such applications involve many contributing agencies. However there seems no specific, compelling evidence indicating that any further information is held in this instance.
42. Therefore, the Commissioner finds that, on the balance of probabilities, the Council does not hold any further information falling within scope of the request.

Regulation 5(2) – time for compliance

43. Regulation 5(2) states that information shall be made available no later than 20 working days after receiving the request.
44. In this case, some information within scope of the request was not disclosed by the Council until July 2023, more than seven months after the request was received. The Commissioner therefore finds a breach of regulation 5(2).

Right of appeal

45. 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

46. 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.
47. 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

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