

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

**Date:** 18 July 2024

**Public Authority:** Somerset Council  
**Address:** County Hall  
Taunton  
Somerset  
TA1 4DY

**Decision (including any steps ordered)**

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1. The complainant has requested information about a report of damage to a listed building. Somerset Council ("the Council") initially withheld the requested information, citing section 31 (law enforcement) of FOIA as its basis for doing so. During the Commissioner's investigation, the Council revised its position and disclosed the requested information. It also accepted the Commissioner's view that the request should have been handled under the EIR.
2. The Commissioner's decision is that, on the balance of probabilities, the Council has disclosed all information within the scope of the request. However, as the Council failed to provide the information within 20 working days of receipt of the request, the Commissioner finds that the Council breached regulation 5(2) of the EIR.
3. The Commissioner does not require the Council to take further steps.

## Request and response

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4. On 8 August 2023, the complainant wrote to the Council and requested information in the following terms:

“In March 2022 I reported significant damage without permission to a listed building in Crewkerne, Somerset, to South Somerset District Council.

The report was given the reference [redacted].

A report by the officer was sent to the Council’s legal department on 26 April this year. I would like to know what the Council has done with this report since it was written.

What conversations has the Council had, both verbally and in writing, on [redacted] since April 2023 and what has been the outcome of those discussions?

Has the Council contacted any external interested parties (for example, the owner or Historic England but not limited to those) since the report was written, and what was the outcome of those discussions?”

5. The Council responded on 15 August 2023. It stated that it was withholding the requested information under section 31(1)(a) of FOIA, on the basis that disclosure could prejudice the Council’s investigation into offences that may have taken place.
6. Following an internal review the Council wrote to the complainant on 5 October 2023. It maintained its reliance on section 31 of FOIA.

## Scope of the case

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7. The complainant contacted the Commissioner on 30 October 2023 to complain about the way their request for information had been handled.
8. During the course of the Commissioner’s investigation, the Council confirmed that it had now reached a decision following its investigation into the circumstances of the unauthorised works. As such, it no longer considered it relevant to rely on section 31 of FOIA to withhold the requested information. The Council also accepted the Commissioner’s assertion that the requested information likely constituted environmental information, therefore any fresh response to the request should be issued in accordance with the EIR, rather than FOIA.

9. On 28 February 2024 the Council informed the Commissioner that it had written to the complainant and disclosed the requested information. The fresh response constituted a table showing key dates taken from the full investigation log, along with various related emails and documents.
10. The complainant expressed their dissatisfaction with the fresh response, on the basis that they considered the Council had not disclosed all information within the scope of the request.
11. In June 2024, following further discussions between the Commissioner and the Council regarding the complainant's concerns, the Council went on to disclose a much larger bundle of documents. The disclosed documents contained redactions of personal information.
12. The complainant maintained that the Council still holds further information that should be disclosed in response to their request. However, the complainant did not dispute the redactions of personal information.
13. The Commissioner therefore considers the scope of his investigation to be to determine whether, on the balance of probabilities, the Council has disclosed all information within the scope of the request.

## **Reasons for decision**

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### **Is the requested information environmental?**

14. 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);
15. The Commissioner understands that the grade II listed building which is the focus of the requested information is within the Crewkerne Conservation Area. Conservation Areas are areas of special architectural or historic interest, and the objective of such designated areas is the preservation or enhancement of heritage assets. The damage referred to in the request relates to works carried out on the building without planning permission or listed building consent. The Commissioner is therefore satisfied that the requested information constitutes environmental information as it relates to cultural sites and built structures, as detailed in regulation 2(1)(f) of the EIR, which are subject to the measures detailed in regulation 2(1)(c).

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

16. Regulation 5(1) of the EIR provides that any person making a request for information is entitled to have that information communicated to them. This is subject to any exceptions that may apply.
17. FOIA and the EIR provide a right of access to information which is held by the public authority in recorded form at the time when it receives the request. This does not extend to the right to ask questions, or to seek explanations, opinions or clarifications – either in general terms, or about the contents of any disclosed information – unless those explanations, etc. are already held by the public authority in recorded form. Essentially public authorities are not obliged to create new recorded information in order to respond to a request.
18. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.

19. In other words, in order to determine such complaints, the Commissioner must decide whether on the balance of probabilities a public authority holds any – or additional – information which falls within the scope of the request.

### **The complainant's position**

20. The complainant has stated that they believe the Council holds further information that should be disclosed. Specifically they highlighted that in its first disclosure the Council only provided key dates from its investigation log, rather than the investigation log in its entirety. They argued that it is difficult to be satisfied that the Council has disclosed all relevant information without seeing the full investigation log. The complainant further stated that whilst the Council had disclosed contacts made by a particular Council officer, they are certain that there will have been other conversations that form part of the full investigation log that have not been disclosed.

### **The Council's position**

21. The Council considers that it has disclosed all information within the scope of the request, and has in fact disclosed emails and related documents for a far wider timeframe than that set out in the request in order to satisfy the complainant's interests in matters surrounding the listed building.

### **The Commissioner's conclusion**

22. In this case the Commissioner considers the scope of the request to be the discussions/actions and associated outcomes, from when the report was submitted to the Council's legal department on 26 April 2023 and 8 August 2023 when the complainant submitted their request for information.
23. Whilst the Commissioner accepts the complainants assertion that access to the full investigation log would provide certainty that the Council had disclosed all information for the discussions and actions within the timeframe given in the request, he does not find that the full investigation log itself falls within the scope of the request.
24. The Commissioner has had sight of the full investigation log, which constitutes a list of entries which each contain a brief note about a discussion/correspondence or action and the date on which they occurred. The Commissioner has compared the investigation log to the information that has been disclosed in response to the request, and he is satisfied that within that disclosed information the complainant has been provided with all correspondence and documents referenced by all

entries on the investigation log between 26 April 2023 and 8 August 2023.

25. The Commissioner notes that the investigation itself, and consequently the full investigation log as well, span a much wider timeframe than that specified by the request. Whilst the Council has also chosen to disclose a large amount of information relating to the listed building from the wider timeframe of the investigation and also preceding the investigation, the Commissioner's role is to reach a decision only on the information described by the request. Where disclosed information indicates that further related information may be held by a public authority, but that further information does not fall within the description set out in the original request, the public authority is not obliged to consider it for disclosure.
26. The Commissioner is satisfied that, on the balance of probabilities, the Council has disclosed all information within the scope of the request and is therefore not required to take any further steps.

### **Procedural matters**

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27. Regulation 5(2) of the EIR provides that requested information shall be made available as soon as possible and no later than 20 working days after the date of receipt of the request.
28. As the non-exempt requested information was not disclosed until during the Commissioner's investigation into this matter, the Commissioner finds that the Council breached regulation 5(2) of the EIR.

## Right of appeal

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29. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

30. 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.
31. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Michael Lea**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**