

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 23 September 2024

Public Authority: Derbyshire County Council
Address: County Hall
Matlock
Derbyshire
DE4 3AG

Decision (including any steps ordered)

1. The complainant requested information held by Derbyshire County Council (the council) relating to the costs of the removal of two trees on a particular road.
2. In response, the council provided the complainant with details held of the total costs of the work carried out by both the council and its contractor.
3. As the council did not include the VAT charge when providing the cost of the work carried out by the contractor, the Commissioner considers that there has been a breach of regulation 5(1) of the EIR. However, he is satisfied that, on the balance of probabilities, the council holds no further breakdown of the costs for removing the relevant trees.
4. The Commissioner requires the council to take the following step to ensure compliance with the legislation.
 - Provide the complainant with the information held that confirms the VAT charge for the work carried out by the contractor.
5. The council must take this step within 30 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

6. On 28 February 2024, the complainant wrote to the council and requested information in the following terms:

“On the morning of Monday 26 February 2024 two verge/roadside trees were sawn down to small stubs in Baslow Road Bakewell.

Please provide me with the cost of providing temporary traffic lights, mobile access platform, vehicles, ancillary plant, and labour to carry out the works.”

7. On 15 March 2024, the council provided a response, which confirmed a cost of £932.20 for “Derbyshire County council labour (including all labour/plant/machines)” and a cost of £510 for “traffic management” services provided by its contractor.
8. The complainant requested an internal review, stating that the council should have provided the full breakdown of all of the costs for the work carried out on the trees.
9. In the council’s internal review response of 22 March 2024, it explained that its “Place Department” had confirmed that an hourly rate is charged for the work carried out, and that this came to a total cost of £932. The council described the hourly charge as a “labour” cost but said that the amount includes the use of labour, plant, and machinery, including “chainsaws, chipper etc.”
10. The council went on to say that it owns all of the equipment used to carry out the work and that given this, there is one hourly rate that is charged for labour regardless of the equipment that is used. The council also advised the complainant that its contractor charged a total of £510 for the traffic management work carried out, and that no further breakdown of this cost was held.

Scope of the case

11. The complainant has said that they believe that the total cost figures provided by the council may not accurately reflect the level of work and use of equipment required to remove the trees. The complainant has said that, given this, they require the full breakdown of the costs incurred in the removal of the trees.

12. The complainant has also set out a number of other concerns in their submissions to the Commissioner which primarily relate to the council's decision to remove only two of six trees that were in the same area. The Commissioner has already explained to the complainant that these concerns do not fall within scope of their request, and that they should contact the council directly if they require further information regarding the management of the trees in Baslow Road.
13. The Commissioner will therefore only decide whether, on the balance of probabilities, the council has provided all of the information held that is relevant to the complainant's request.

Reasons for decision

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

14. Under regulation 5(1) of the EIR, a public authority must make environmental information available on request if it holds the information and it is not subject to an exception.
15. Where there is a dispute between a public authority and a complainant as to whether all requested information falling within the scope of a request has been provided, the Commissioner, following the lead of a number of First-tier Tribunal decisions, must decide the matter based on the civil standard of the balance of probabilities.
16. The council has confirmed the cost of £510 for the provision of traffic management services was based on a standard daily rate that has been agreed between the council and the contractor. It said that as it is a set daily rate, no further breakdown of the cost for this work is held.
17. The council has said that its Place Department, which is the responsible department for tree work, raised an order with the council's inhouse Landscape Services, which sits within its Property Division. The council explained that the Property Division then arranged for its landscape operatives to undertake the tree work.
18. The council has confirmed that it used its own plant and machinery to undertake the tree work. It has said that one hourly "labour" rate is charged for work carried out by the landscape operatives; all vehicles, plant, machinery and equipment are included within this hourly "labour" rate. The council also said that as landscape operatives drive council vehicles, transport costs to and from the job are also included within the hourly rate.

19. The council has provided the Commissioner with a copy of the invoice it received from the contractor. This only includes the daily rate charged by the contractor for the provision of its traffic management services, and provides no further breakdown of the charge by way of use of equipment, hourly labour rate, or similar. Based on the current information available, it is the Commissioner's view that, on the balance of probabilities, no further breakdown of the £510 charge is held by the council.
20. However, the invoice provided for the Commissioner's consideration also includes a VAT charge in addition to the £510 cost for the work carried out by the contractor. The Commissioner considers that the council should have provided this information to the complainant to show the true total cost of the traffic management services.
21. With regard to the tree removal work that was carried out by the council's landscape operatives, the Commissioner is satisfied that the charge is calculated based solely on the number of hours of labour required to complete the work, regardless of the type and amount of council owned machinery and equipment that is used.
22. Therefore, whilst the Commissioner concludes that the council should have included the VAT charge as part of the total cost of the work carried out by the contractor, he is satisfied that the council has provided sufficient explanations to the complainant as to why it does not hold any further breakdown of the costs of the work that was carried out.
23. The Commissioner has therefore decided that aside from the VAT charge for the work carried out by the contractor, on the balance of probabilities, there is no additional information held by the council that is relevant to the complainant's request.

Right of appeal

24. 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

25. 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.
26. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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