

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 17 October 2024

Public Authority: Purton Parish Council
Address: Council Office
Village Hall
Purton
SN5 4AJ

Decision (including any steps ordered)

1. The complainant requested information from Purton Parish Council ("the Council") relating to the revision of a neighbourhood plan.
2. The Commissioner's decision is that by failing to correctly identify the requested information and subsequently make that information available the Council has breached regulation 5(1) of the EIR.
3. He also finds that the Council has breached regulation 5(2) of the EIR by failing to provide the requested information within 20 working days.
4. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - The Council must provide the complainant with a fresh response to their information request which either discloses the requested information or issue a refusal notice which complies with regulation 14 of the EIR.
5. The Council must take these steps 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 15 January 2024, the complainant wrote to the Council and requested information relating to the revision of the Purton Neighbourhood Plan in the following terms:

“...a copy of your report to the Council on 8th January.”
7. The Council responded on 5 March 2024 and provided the complainant with a report relating to the revision of the Purton Neighbourhood Plan. However, the Council stated that it had withheld some information from that report relating to “personnel matters”.
8. On 6 March 2024, the complainant requested an internal review in relation to the information that was redacted from the report. The Council provided the complainant with the outcome of its internal review on 11 March 2024 in which it refused to provide the withheld information stating that the information relates to “personnel” and personal data.

Scope of the case

9. The complainant contacted the Commissioner on 23 March 2024 to complain about the way their request for information had been handled.
10. During the course of his investigation, the Commissioner asked the Council to provide him with a copy of the requested report which included the withheld information. Upon receipt of this information, the Commissioner noted that the report provided to him by the Council differed considerably to the report provided to the complainant on 5 March 2024.
11. The Commissioner contacted the Council and asked it to explain why the report provided to him during the course of his investigation differs to the report provided to the complainant on 5 March 2024. The Council stated that upon review, it appears that the version of the report provided to the complainant was a draft report rather than the finalised report that was presented to the Council on 8 January 2024.
12. The Commissioner considers the finalised report that was presented to the Council on 8 January 2024 and given to him during the course of his investigation to be the information requested by the complainant. He therefore considers that by providing the complainant with the draft report, the Council did not correctly identify the requested information when responding to the request.

13. Furthermore, whilst the Council has handled the request under FOIA, the Commissioner considers the requested information to be environmental as defined in regulation 2(1) of the EIR. Regulation 2(1)(c) defines environmental information as being any information on:

“(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) and (b) as well as measures or activities designed to protect those elements.”
14. The Commissioner considers Purton Neighbourhood Plan to be a measure likely to affect the environment. As the requested information relates to that measure, specifically the revision of Purton Neighbourhood Plan, the Commissioner considers the information to be environmental. Therefore, the Commissioner is of the view that the Council should have handled the request under the EIR rather than under FOIA.
15. In light of the above, in this notice the Commissioner will consider whether the Council has complied with its obligations under regulation 5(1) (duty to provide environmental information) and regulation 5(2) (time for compliance) of the EIR.

Reasons for decision

16. Regulation 5(1) of the EIR states that a public authority that holds environmental information shall make it available on request.
17. Regulation 5(2) of the EIR states that information shall be made available as soon as possible and no later than 20 working days after the date of receipt of the request.
18. As stated earlier in this notice, during the course of his investigation it became apparent to the Commissioner that the report provided to the complainant on 5 March 2024 was not the information that was within the scope of the complainant’s request and was held by the Council at the time of the request. The Council has provided the complainant with a draft report rather than the finalised report that was presented to the Council on 8 January 2024. The finalised report was the information that was requested.
19. Therefore, the Commissioner’s decision is that by failing to correctly identify the requested information and subsequently make that information available the Council has breached regulation 5(1) of the EIR. He also finds that the Council has breached regulation 5(2) of the

EIR by failing to provide the requested information within 20 working days.

20. The Commissioner requires the Council to provide the complainant with a fresh response to the request which considers the requested information, that being the report that was presented to the Council on 8 January 2024 and given to the Commissioner during the course of his investigation. The Council should either disclose the requested information to the complainant or, if it intends to withhold any of the information under an exception, issue a refusal notice which complies with regulation 14 of the EIR.

Other matters

21. The Commissioner would like to highlight that when disclosing information under the EIR, information is effectively being disclosed to the world at large. Therefore, when providing its fresh response to the request the Council should consider whether the requested information contains the personal data of a third party or the requester.
22. If the requested information does contain the personal data of a third party or the requester, where appropriate the Council should withhold that information under the relevant exceptions, these being regulation 13(1) (personal data of a third party) and regulation 5(3) (personal data of the requester) of the EIR. The Commissioner also advises the Council to review his guidance on regulation 13(1) of the EIR, particularly part one of that guidance¹.

¹ <https://ico.org.uk/for-organisations/foi/section-40-and-regulation-13-personal-information/>

Right of appeal

23. 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

24. 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.
25. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Ben Tomes
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF