

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

Date: 29 November 2024

Public Authority: Sandwell Metropolitan Borough Council
Address: PO Box 2374
Oldbury
B69 3DE

Decision (including any steps ordered)

1. The complainant has requested information relating to improvement work on a block of flats from Sandwell Metropolitan Borough Council (the Council).
2. The Commissioner's decision is that the request should have been handled under the Environmental Information Regulations 2004 (EIR) rather than the Freedom of Information Act 2000 (FOIA). The Commissioner also finds that the Council breached regulation 5(2) by failing to respond to the request within 20 working days.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the request under the EIR.
4. 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

5. On 3 November 2023, the complainant wrote to the Council and requested information in the following terms:

“I would like to have the exact amount down to the last penny that was handed over to Keepmoat for the upgrades that they never carried out and how much was spent on third parties to rectify all the undercutting Keepmoat did.”

6. The Council responded on 22 January 2024. It explained that the request was being handled under the FOIA and provided some information within the scope of the request.

Scope of the case

7. The complainant contacted the Commissioner on 29 July 2024 to complain about the way their request for information had been handled.
8. While investigating the request, it came to the Commissioner’s attention that Keepmoat was appointed by the Council to complete improvement work on a block of flats. These improvements included new roofs, energy efficient external cladding and new windows and balconies.
9. In view of the nature of the request, which relates to improvements conducted on a block of flats, the Commissioner considers that the information is likely to be environmental and therefore should have been handled under the EIR rather than FOIA.

Reasons for decision

Is the requested information environmental?

10. 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);
11. As the requested information is information relating to improvement work on a block of flats, the Commissioner believes that the requested information is likely to be information on measures which affect or are likely to affect the elements of the environment. For procedural reasons, he has therefore determined that this case falls under the EIR.
12. The Commissioner requires the Council to provide the complainant with a fresh response to the request under the EIR. The Council should conduct thorough searches to ensure all information held in scope is disclosed or, if exempt, explain why it is being withheld and state under which exception/s.

Procedural matters

Regulation 5(2) – time for compliance

13. Regulation 5(2) of the EIR states that: "Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request."
14. In the circumstances of this case, the complainant submitted their request on 3 November 2023 and a response was not provided until 22 January 2024.

15. Based on the above, the Commissioner finds that the Council breached regulation 5(2) by failing to respond within 20 working days.

Right of appeal

16. 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

17. 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.
18. 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
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