

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 26 November 2024

**Public Authority:** Dorset Council  
**Address:** County Hall  
Colliton Park  
Dorchester  
Dorset  
DT1 1XJ

#### **Decision (including any steps ordered)**

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1. The complainant requested any information about specific refuse bins causing an obstruction. Dorset Council ('the Council') originally responded to the request by explaining that any CCTV footage sought by the complainant could be inspected. During the course of the Commissioner's investigation, the Council stated to the Commissioner that it considered it had made all relevant information available.
2. The Commissioner's decision is that the Council has made all relevant information available to the complainant and has complied with regulation 5(1) of the EIR.
3. The Commissioner does not require further steps.

#### **Request and response**

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

"Im requesting to know how long bins belonging to [redacted property] have been causing an obstruction on public highways which has caused me injury. This could either be via CCTV or even just a record written description which you should be able to do using the CCTV on the bin

lorrys when theyre doing their rounds. I would like you to go back a month if possible from 29/05/2023 so start day would be 29/04/2023 ending 29/05/2023.”

5. The Council responded on 15 June 2023. It stated that it interpreted the request as seeking CCTV footage. It stated that it could make CCTV footage available for inspection, and provided advice on how to request an appointment for this. It indicated that no information (as described by the request) was held about the bins causing an 'obstruction'. However, it provided advice that the CCTV footage for the last visit (of a refuse collection lorry) had been reviewed, and that the bins were not considered to be causing an obstruction.

### **Scope of the case**

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6. This decision relates to the above request, which was made by the complainant on 5 June 2023.
7. The complainant has stated to the Commissioner that this request was for any CCTV footage showing refuse bins “causing an obstruction” in the 30 days leading up to the request. The complainant has clarified to the Commissioner that they understand the Council only holds CCTV footage for 30 days before deleting it.
8. The Commissioner notes that he has recently considered a similar request by the complainant in decision notice IC-279542-D4M3<sup>1</sup>, which relates to a later request made by the complainant on 14 September 2023. In that decision, the Commissioner found that the Council had identified all held information falling within scope of that request, but ordered the Council to disclose some which had not yet been provided to the complainant.
9. The scope of the following analysis is whether the Council holds information falling within scope of the 5 June 2023 request, which has not already been disclosed or made available to the complainant.

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<sup>1</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2024/4029586/ic-279542-d4m3.pdf>

## Reasons for decision

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

10. 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.
11. In scenarios where there is some dispute between whether the public authority holds additional relevant information, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
12. In other words, in order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request (or was held at the time of the request).

### The complainant's position

13. The complainant has provided detailed submissions to the Commissioner, in which they explain the context of their request, and raise a number of issues about the Council's handling of it. The Commissioner understands that the focus of these issues is that the Council has purposely failed to disclose the information requested, and has therefore committed an offence under regulation 19 (altering records with intent to prevent disclosure) of the EIR.

### The Council's position

14. The Council has explained to the Commissioner that it considers it has disclosed all relevant information in respect of the request.
15. The Council has explained that the context of the request is an incident relating to the complainant. In respect of this incident, the Council has previously provided information to the complainant following a subject access request under the Data Protection Act 2018. The Council has also provided other information (relating to the date of the incident) to the complainant following a later EIR request – which was the subject of decision notice IC-279542-D4M3.
16. The Council has also explained that it has advised the complainant that any CCTV footage can be inspected, and the complainant arranged a meeting to do this on 5 July 2023.

17. Whilst the complainant has asked for the Council to review CCTV and make a statement (or otherwise curate clips of CCTV showing the position of bins), the Council argues that it is not required to create new information to respond to an information request under the EIR.
18. As such, the Council considers that it has disclosed all the recorded information it holds that is within the scope of the complainant's 5 June 2023 information request.

#### The Commissioner's conclusion

19. The Commissioner has reviewed the request, in conjunction with the complainant's clarification of it, and both the complainant's and Council's submissions on regulation 5(1).
20. The Commissioner understands that the Council has disclosed information in respect of the complainant's incident, both in respect of a subject access request, and other information following a later EIR request. In addition to this, the Commissioner notes that the Council advised the complainant that they could inspect CCTV footage relating to their incident, and that the complainant attended the Council's premises on 5 July 2023 to do this.
21. The Commissioner also notes, from the complainant's submissions, that they acknowledge they have received "the footage of how the bin lid came to be in the road".
22. There is no evidence available to the Commissioner that suggests that further recorded information is held which would fall within the parameters of the request. Whilst the Commissioner recognises, from the complainant's submissions, that they are dissatisfied with the Council's response to an injury claim made against it, and the basis for it, this is not a matter that falls under the EIR or the Freedom of Information Act.
23. The Commissioner is therefore satisfied, on the balance of probabilities, that all information has been provided to the complainant, and that the Council has therefore complied with regulation 5(1) in respect of this request.

#### **Other matters**

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24. As indicated in paragraph 13 above, the complainant suggested to the Commissioner that the Council had deliberately withheld information.

25. Regulation 19 of the EIR states that a criminal offence is committed if any person alters, defaces, blocks, erases, destroys or conceals any information with the intention of preventing the applicant from receiving any of the information he is entitled to receive. In order to secure a conviction in criminal proceedings, each element of an offence must be proven to the criminal standard, that being 'beyond reasonable doubt', as opposed to the lesser civil standard of 'balance of probabilities'. If this standard of proof is not met, any prosecution will fail. In order to secure a conviction in a regulation 19 prosecution the Commissioner has to prove that there was a clear intention to prevent disclosure on the part of the public authority.
26. The Commissioner has considered the circumstances of this case, and has found, on the balance of probabilities, that the Council has disclosed all relevant held information. There is no evidence available to the Commissioner that suggests further information is held, or consequently, that it is deliberately withheld. Therefore, the Commissioner has not undertaken a criminal investigation in this case.

## Right of appeal

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27. 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)

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

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