

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

### **Decision notice**

**Date:** 13 December 2024

**Public Authority:** Warwickshire County Council  
**Address:** Shire Hall  
Warwick  
CV34 4RL

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

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1. The complainant requested information held by Warwickshire County Council (the council) about parking control for a particular road.
2. The Commissioner is satisfied that, on the balance of probabilities, the council does not hold information that falls within scope of the complainant's request
3. However, as the council failed to issue a refusal notice in response to the request within the statutory 20 working days, the Commissioner has recorded a breach of regulation 14 of the EIR.
4. The Commissioner does not require any steps to be taken as a result of this decision notice.

#### **Request and response**

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5. The complainant has made a number of requests to the council for information held relating to parking control and enforcement for a particular road.
6. On 4 April 2024, the complainant sent detailed correspondence to the council setting out some of their concerns about decisions that had been made in relation to the parking control for the road. The complainant set out three points (marked 1-3) within their correspondence which

contained descriptions of emails that they argued contain "proof" that the road in question is subject to an off street parking order under the control of Warwick District Council (district council).

7. The complainant's correspondence then went on to set out the following three part request for information:

"now make a FOI request to be answered in 20 working days in three separate parts for information for the first time of asking.

Part (1) I hold a letter from [officer A name redacted] Dated 1-3-2019 Traffic and Road Safety (WCC) He says, I have spoken to a Colleague at (WDC) to understand the background to parking enforcement and control in [address redacted]. There have been numerous discussions with (WDC) about the introduction of further waiting restrictions in Weston Close." **My request is, For the information on the discussions in writing.**

Part (2) I received a letter from [MP name redacted] my M.P. Dated 229-11-2021 explaining to me in respect of the Weston Close parking situation he has had several meetings with representatives from both (WCC) and (WDC) to discuss the issue. He says furthermore it is his understanding that (WCC) is due to conduct another consultation but has been delayed due to the pandemic. **My request is, For all minutes, emails, letters, and discussions in electronic or paper from the meeting mentioned between (WCC) and [MP name redacted] and a copy of the proposed consultation that was delayed by the pandemic.**

Part (3) I hold a copy of an email showing that a virtual meeting on Weston Close Parking was to take place, held at 9-45 am Friday 23 of April 2021 with [officer B name redacted] AND [officer C name redacted] involved in the discussions. **My request is, A copy of the virtual meeting and the discussions mentioned that took place at 9-45 am on Friday 23 April 2021."**

8. On 7 May 2024, the council provided a response to the three points set out in the complainant's correspondence that had described three emails; the council advised that it either did not hold information that would answer each point, or said that the answer was subject to the exemption at section 42 (legal professional privilege) of the Freedom of Information Act 2000 (FOIA).
9. On 21 May 2024, the complainant requested an internal review. They complained that the council had taken too long to respond to their

request. They also questioned the content of the council's response, stating that they had not requested any information that would be subject to legal professional privilege.

10. On 17 June 2024, the council provided its internal review response, upholding the complaint about the delay in its initial response to the request.
11. The council said that it appeared there had been some confusion about what information the complainant had required. It explained that given this, it had intended to provide a response to both the points made by the complainant in relation to the three emails they had described, and also the points set out in paragraph 7 above. The council said that, in error, it did not provide a response to the latter.
12. The council then went on to provide a response to the complainant's request set out in paragraph 7 above.
13. The council advised the complainant that it did not hold information relevant to part 1 of their request.
14. With regard to part 2 of the request, the council said that despite having made enquiries, it was still not clear whether the information was held, or who would hold this information. The council said that it might be the case that the complainant's MP might hold the information that they were seeking. It said that, alternatively, if the complainant was able to clarify which officers had met with the MP, then it would then make further enquiries.
15. The council also said that the information required was from 2021, and therefore if any information is held, it is highly likely that this would have already been provided, or withheld under a relevant exemption, in response to previous requests that it had received from the complainant about the same matter.
16. With regard to part 3 of the request, the council advised that whilst it could confirm that a meeting was requested by the MP, Officer C did not attend that meeting. The council confirmed that another officer attended the meeting instead, but than no notes were shared with them following the meeting. The council said that whilst it did not hold information falling within scope of part 3 of the request, the complainant might wish to contact their MP's office to see if they hold any relevant information.

## Scope of the case

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17. The complainant has raised a number of concerns about the council's handling of their information request of 4 April 2024. The Commissioner has summarised their concerns as follows:
- That the council's original response to their request was outside the statutory time limit.
  - They do not accept the reasoning set out by the council in its internal review response as to why it originally failed to provide a full and proper response to the three parts of their request.
  - The council is not correct to say in its response that it has already provided information that has been requested.
  - The council must hold information relevant to all three parts of the request.
18. The Commissioner considers the scope of his investigation to be whether, on the balance of probabilities, the council holds any information that is relevant to the complainant's three part request. The Commissioner will also consider certain procedural matters, as requested by the complainant.

## Reasons for decision

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### Is the requested information environmental?

19. [Regulation 2\(1\)](#) of the EIR defines environmental information.
20. The complainant has requested information that primarily relates to parking control, enforcement, and also a proposed consultation relating to parking in the local area. The Commissioner is satisfied that this information falls within "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" defined in [regulation 2\(1\)\(c\)](#) of the EIR which affect or is likely to affect the elements of the environment outlined in [regulation 2\(1\)\(a\)](#) of the EIR.
21. Therefore, the Commissioner considers that the request was for environmental information as defined by regulation 2(1) of the EIR.

### **Regulation 12(4)(a) – information not held**

22. Regulation 5 of the EIR requires that a public authority that holds information shall make it available on request. This is subject to any exclusions or exceptions that may apply.
23. Regulation 12(4)(a) of the EIR says that a public authority may refuse to disclose information to the extent that it does not hold that information when an applicant's request is received.
24. In scenarios where there is some dispute about whether a public authority holds 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.
25. The Commissioner will consider the evidence and arguments presented by both parties. The Commissioner will also consider any reason why it is inherently likely, or unlikely, that information is not held.

#### The complainant's position

26. The complainant has said that as this is the first time that they have asked for this specific information, the council is not correct to say that it would already have been released previously, if held and not subject to an exemption.
27. The complainant has said that there is evidence that there have been "numerous discussions" between the council and the district council about matters concerning parking control for the road. This includes discussions about the situation and options for improvement, and also the agreement reached on the introduction of further waiting restrictions. The complainant says that, given the importance of these matters, there must be recorded information held of the discussions that took place.

#### The council's position

28. The council has provided the Commissioner with full details of the searches that have been carried out in order to identify information that is relevant to all three parts of the request.
29. This includes the email accounts of all officers named in the request. In addition, where it is the case that other individuals have taken over the roles previously held by the officers named in the complainant's request, the council has confirmed that searches of their email accounts have also been conducted. The council has also advised that it has carried out checks with the legal team, and that it has conducted searches of the email accounts of other officers, including senior management, who

have had involvement with, or oversight of, the matters that relate to the request.

30. The council has also explained that it has used a number of different key words when conducting searches of electronic records, including the name of the road, name of officers within the council and the district council, and also the MP.
31. The council has also confirmed that searches were conducted of the "H" and "G" drives on its network to identify if any recorded information was held that is relevant to the request.
32. The council has advised that the searches that were carried out within emails and electronic records have not identified any information that would fall within scope of the three parts of the complainant's request.
33. With specific reference to the terms of part 2 of the request, the council has said that all relevant officers have confirmed that they have no knowledge or record of a meeting with the MP within the Parking Team, or the Legal Team, that may have taken place three years ago.
34. The council has said that its Minor Works team, which is responsible for undertaking public consultations for parking restrictions, carried out searches of both the council's published records and its own records in order to identify if there was any information held about the proposed public consultation that the complainant referred to in their request.
35. The council has said that there have been no public consultations regarding parking restrictions in the relevant road since 2018/2019 and that the restrictions consulted upon at that time came into force on 15 August 2019. The council said that there are no plans to introduce further parking restrictions on the road, and therefore no further consultations have been undertaken or are planned.
36. With regard to part 3 of the request, the council has said that there is a record of the date of the relevant meeting in the diary of the council officer who attended that meeting. However, it says that a search of that officer's emails and the council's records have not identified any further information relating to that meeting. The council has said that as it was a meeting that the officer was invited to, the council would not necessarily hold details of the discussions that took place, including notes taken, minutes recorded, or any other recorded information, of that meeting.
37. The council has said that certain points that were set out in its internal review response may have been misinterpreted. With regard to its comment that information may have been requested previously, the council states that its intention was to explain to the complainant that it

believes that they have already received all of the information held that is relevant to the issues to which the request relates.

38. The council has said that in previous requests, the complainant has asked for letters, emails, hard copies, microfilm, telephone transcripts, verbal agreements and outcomes of all meetings, discussions and opinions relating to matters concerning parking on the relevant road.
39. The council says that it believes that the previous requests have captured all of the information that is held about the relevant matters, and that this has been provided unless an appropriate exemption has been applicable.

#### The Commissioner's conclusion

40. The Commissioner has considered both parties representations and arguments in conjunction with the request.
41. The Commissioner recognises that the complainant believes that information relevant to their request must be held by the council.
42. However, it is not for the Commissioner to determine if the information requested by the complainant in this case should be held by the council, but rather whether there is any evidence to indicate that it is held.
43. Based on the evidence made available to him, it is the Commissioner's view that the council has carried out appropriate and proportionate searches which would have located any information falling within the scope of the three parts of the complainant's request. Furthermore, the Commissioner has found no substantive evidence which would indicate that the information requested by the complainant is held.
44. The Commissioner also considers it pertinent to note that the council has invited the complainant to provide any additional information they believe might assist in locating information which may be held in areas where the council would not have expected information to be, if held.
45. Based on the searches that have been undertaken, and the explanations provided by the council, the Commissioner concludes that, on the balance of probabilities, the council does not hold any information falling within the scope of the complainant's request.

#### **Public interest test**

46. Technically, regulation 12(4)(a) contains a public interest test. However, the Commissioner cannot conceive of a public interest argument that would require a public authority to disclose information that it did not hold.

## **Procedural matters**

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47. The complaint has raised concerns about the time taken by the council to respond to their request.
48. The council has already acknowledged in its internal review response that it exceeded the statutory 20 working days in which to issue its refusal notice by two days. The Commissioner has therefore found a breach of regulation 14 of the EIR.

## **Other matters**

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49. The Commissioner notes that there has been a significant amount of correspondence exchanged between the parties on matters relating to the parking control on the relevant road. He also acknowledges that the complainant's correspondence to the council is often very detailed in content. However, whilst the council has said that this has sometimes led to difficulties identifying requests for information, the Commissioner considers that it was very clear what part of the complainant's correspondence of 4 April 2024, was intended to be a formal request for information.
50. The Commissioner would therefore remind the council of its obligation to correctly identify requests that it receives under the EIR, and respond appropriately.



## **Right of appeal**

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51. 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)

52. 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.
53. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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