

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 6 February 2025

Public Authority: City of York Council
Address: West Offices
Station Rise
York
YO1 6GA

Decision (including any steps ordered)

1. The complainant has requested information relating to 5G infrastructure in the City of York region. The City of York Council (the council) stated that it did not hold the information.
2. The Commissioner's decision is that the council does not hold the requested information. He also finds that the council breached regulation 11 of the EIR by failing to provide the internal review within 40 working days.
3. The Commissioner does not require further steps.

Request and response

4. On 11 March 2024, the complainant wrote to the council and requested information in the following terms:

Recent incidents in other UK councils, such as the unauthorized erection of a 5G mast in Dorset without planning consent, highlight the importance of robust processes and transparent decision-making regarding 5G infrastructure.

It is imperative for the City of York Council to demonstrate accountability and ensure the safety and well-being of its residents in all aspects of 5G mast installations.

In light of this context, I request the following information from the City of York Council:

- 1). Details of all internal risk assessments, environmental impact studies, public health analyses, and any independent expert reviews or third-party assessments commissioned by the council, specifically evaluating the effects and safety implications of 5G mast emissions within York. Please provide documentation of any findings, methodologies used, and dates of assessment.
 - 2). Evidence of the council's due diligence processes to verify compliance with relevant regulations and standards before approving 5G mast installations. This should include records of site inspections, technical reviews, communications with mobile operators, and any measures undertaken by the council to ensure ongoing monitoring and oversight of operational 5G masts for continued compliance.
 - 3). Records of any legal indemnities, liability insurance, or other protective measures obtained from mobile operators to safeguard the council and York residents in case of future public health or environmental impacts from 5G mast operations.
 - 4). Please provide documentation outlining the terms of such agreements and any assessments conducted to ensure their adequacy.
 - 5). Details of any public consultation processes conducted by the council regarding 5G mast installations, including documentation of resident feedback, concerns raised, and mitigation strategies implemented in response. Please include copies of meeting minutes, reports, or other relevant materials from these consultations.
 - 6). Disclosure of the council's policies, procedures, or action plans in place to fulfil [sic] its duty of care and act in the best interests of York residents concerning potential risks associated with 5G infrastructure. Please provide documentation outlining the council's approach to risk management, decision-making criteria, and any measures taken to address identified risks."
5. The council responded on 13 March 2024. In relation to the complainant's requests at points 1, 2, 3, 4 and 6, it referred the complainant to responses to their previous FOI requests reference CGT13648 and CGT20745. In relation to point 5 of the request, the council stated that it did not hold the information.
 6. On 15 March 2024 the complainant requested for an internal review in which they stated that the council had provided "inadequate responses,

exhibited inconsistencies, obfuscated information and lacked transparency”.

7. Following an internal review the council wrote to the complainant on 18 July 2024 and maintained its original position.

Scope of the case

8. The complainant contacted the Commissioner on 18 June 2024 to complain about the council's failure to provide a response to their request for internal review.
9. The Commissioner originally exercised his discretion to accept the complaint without internal review. However, on 18 July 2024 the council provided its response to the internal review. On 30 July 2024 the complainant wrote to the Commissioner outlining why they were dissatisfied with the council's response.
10. On 14 October 2024 the Commissioner wrote to the council to request further information particularly in relation to the two previous requests reference CGT13648 and CGT20745 which the council had referred the complainant to in response to the current request (RF-04353).
11. During the Commissioner's investigation he formed the opinion that whilst the complainant's current request was substantially similar to their two previous requests due to the scope of the request and the subject matter, further clarification was required to explain the references to the two previous requests and the council's reference to regulation 12(4)(b) of the EIR.
12. The council in its response of 23 January 2025 stated that it intended to rely on regulation 12(4)(b) of the EIR for the current request given the historic nature and context of the previous requests. It stated that the weight of the public interest was in favour of not providing a full response to the complainant's current request. The council said that as the requests were not identical, it determined that it would be better to send a reminder to the complainant where the information had already been provided to assist the complainant rather than applying regulation 12(4)(b) of the EIR. However, on review, it decided it is more helpful to provide further response, restating information it has previously provided rather than rely on an exception.
13. The council answered each point of the complainant's request on 23 January 2025. The Commissioner is aware that the complainant is dissatisfied with the response they received from the council recently.

14. The Commissioner considers that the scope of this case is to determine whether the council has provided all of the information it holds about 5G infrastructure, relating to the scope of the complainant's request.

Reasons for decision

Regulation 3(2)- information held by the public authority

15. Regulation 3(2) of the EIR states that:
16. (2) For the purposes of these Regulations, environmental information is held by a public authority if the information –
 - (a) is in the authority's possession and has been produced or received by the authority; or
 - (b) is held by another person on behalf of the public authority.

The council's position

17. In the initial response to the Commissioner the council maintained that taking the information from the two responses under CGT13648 and CGT20745, it explained what the council holds, which information is not held and provided appropriate links and directions to the held information including additional information to assist the complainant's understanding.
18. In the council's recent response it confirmed that it did not hold any of the information falling within the scope of the complainant's current request. In relation to point one of the complainant's request the council explained that it relies on the UK Health Security Agency (UKHSA) advice on potential health risks of radio waves from telecommunication systems including those providing 5G services. It provided a link to UKHSA's guidance on 5G technologies, radio waves and health.
19. The council confirmed that it did not hold information for point 2 of the complainant's request. To provide further assistance to the complainant, it provided a link to its planning application portal for the information it holds about 5G planning applications.
20. In relation to the complainant's request at point 3 and 4 the council confirmed that it does not own or operate any 5G masts and therefore does not hold any information regarding legal indemnities, liability insurance etc. The council also confirmed that it has not conducted any public consultation processes regarding 5G mast installations or implemented mitigation strategies following resident feedback. It signposted the complainant to its planning application portal for information it holds relating to 5G applications.

21. In relation to the policies, procedures, action plans in place to fulfil its duty of care in respect of 5G infrastructure, the council stated that it does not have specific planning policies relating to 5G infrastructure. It added that it follows planning law when considering planning applications including risk management.
22. The council has also recently written to the complainant and provided them with the links to the planning policies it relies on to make decisions about planning applications. It reiterated that it does not hold specific planning policies for 5G infrastructure.

The complainant's position

23. Following the internal review, the complainant submitted the following to the Commissioner:

"Unfortunately, it appears that the City of York Council has not fully satisfied their disclosure obligations under the Freedom of Information Act and Environmental Information Regulations. Consequently, I am not satisfied with the outcome of the review and wish to challenge it, keeping the case open for further investigation. My dissatisfaction is based on the following grounds:

Inadequate Response: The council repeatedly referred to previous responses (CGT13648 and CGT20745) without directly addressing the new, specific inquiries raised in this request. This does not constitute providing reasonable advice and assistance as required under Section 16 of the FOIA.

Lack of New Information: Despite the request for details about risk assessments, environmental impact studies, public health analyses, and independent expert reviews specifically related to 5G mast emissions in York, the council did not provide any new or updated information.

Claim of No Information: For the question about public consultation processes, the council claimed this information is not held. This is concerning, as it suggests a lack of public engagement on an issue of significant public interest.

Delayed Response: The council took an unusually long time to respond to the request for an internal review, apologizing for the delay. This goes against the typical timeframes for responding to FOI requests and reviews.

Incomplete Review: The internal review does not appear to have thoroughly addressed all the points raised in the complaint, particularly regarding the alleged breaches of various regulations and principles.

Lack of Transparency: The council's approach seems to lack transparency, especially given the public interest in the potential health and environmental impacts of 5G technology.

While the council did respond and conduct an internal review, their response does not seem to fully meet the spirit of openness and transparency intended by freedom of information laws.”

24. The Commissioner has noted the additional matters raised by the complainant in their correspondence to the council on 27 January 2025 in which they shared public safety concerns and what they considered to be the lack of the council in ensuring that due diligence has been conducted in the deployment of 5G infrastructure.

The Commissioner's view

25. The Commissioner has carefully considered the information before him. He accepts that the council does not hold information that is specifically related to 5G infrastructure. The Complainant has not provided the Commissioner with any evidence to suggest that the council holds this information or that it is held on the council's behalf. The complainant has referred to independent expert reviews specifically related to 5G mast emissions in York. However, there is no evidence from the complainant demonstrating whether those independent reviews were conducted on behalf of the council.
26. During the Commissioner's investigations it became apparent that the council does not hold information about 5G masts infrastructure. He has considered the council's responses to the complainant's previous requests where it has consistently advised the complainant that the information they seek about 5G is not held. The Commissioner has reviewed the planning portal following the steps provided to the complainant by the council. He noted that there was only one planning application related to 5G masts installation which was refused. He has also gone further to have a telephone conversation with the council which has confirmed that it does not hold any information specifically related to the scope of the complainant's request. The council has said that it does not own or operate 5G within the York area.
27. The Commissioner has noted the complainant's concern of the need for clear documentation of safety certificates for 5G masts. He understands the complainant's concern for the health and safety of York residents. He has noted their appeal to the council to ensure due diligence has been conducted in the deployment of 5G infrastructure, its compliance with safety standards and the implementation of safeguards to protect public health. However, in the Commissioner's view, the complainant's recent correspondence highlighting the council's "failure" to properly assess or scrutinize safety certificates for 5G masts does not fall within

the scope of the current request and therefore cannot be considered within this decision notice.

Procedural matters

Regulation 11- internal review

28. Regulation 11(4) requires authorities to provide a response to an internal review request within 40 working days of the date of receipt.
29. In this case, the complainant requested an internal review on 15 March 2024. The council issued its response on 18 July 2024 and apologised for the delay in responding.
30. The Commissioner finds that in failing to provide a review response in time, the council breached regulation 11(4) of the EIR

Right of appeal

31. 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

32. 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.
33. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Esi Mensah
Senior Case Officer
Information Commissioner's Office
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