

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

Date: 24 January 2020

Public Authority: Woking Borough Council
Address: Civic Offices
Gloucester Square
Woking
Surrey
GU21 6YL

Decision (including any steps ordered)

1. The complainant has requested confirmation as to whether the council had provided a sum of £250,000,000 to a developer in association with plans to develop Woking Football Club's football stadium and a residential development to facilitate this. The council refused to confirm or deny whether it held any information relevant to the request, citing section 43 of the Act, (commercial interests). However, during the course of the Commissioner's investigation of an associated case, the council published the information it holds relating to this via a weblink.
2. The Commissioner's decision is that the council did not comply with section 10(1) of the Act in that it did not disclose the information within 20 working days of receiving the request for information.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 24 September 2019, the complainant wrote to the council and requested information in the following terms:

"I have been informed that Woking Borough Council authorised a £250m contribution, in March, to the redevelopment scheme around Cardinal Court and the football club.

Under the Freedom of Information Act could you please either confirm or deny this matter."

5. The council responded on 3 October 2019. It neither confirmed nor denied whether it held relevant information on the basis that section 43(3) of the Act applied.
6. The complainant wrote back to the council on 8 October 2019 asking it to review its decision on the basis that he did not believe that the exemption applied.
7. The council confirmed that it received the request for review on 11 October 2019.
8. At the time of the complaint to the Commissioner, no review had been carried out by the council. However, the council informed the Commissioner that it was undertaking a review of information relating to the project as a whole, with a view to publishing as much information as it could. Given the circumstances the Commissioner did not ask the complainant to request a review as this was therefore already being undertaken by the council.

Scope of the case

9. The complainant contacted the Commissioner 28 October 2019 to complain about the way his request for information had been handled. He considered that the council should have responded to his request for information by confirming or denying whether there had been a £250 million contribution or not.
10. During the course of the Commissioner's investigation of another, associated case, the council asked for additional time to respond to the Commissioner's questions as it was considering whether to disclose the information.

11. The Commissioner asked the council whether any information falling within the scope of that case would also respond to the request in this instance. The council confirmed to the Commissioner that it would, and that its reconsideration would take into account the information relevant to this case.
12. The Commissioner did not therefore ask the complainant to ask the council to carry out a review of its request as she was aware that this was already under consideration.
13. The council subsequently disclosed information pertaining to both requests and informed the Commissioner of this on 29 November 2019. Information which confirmed that there was a £250m revolving loan facility involved was included within the information disclosed.¹
14. The Commissioner considers that the disclosure of this information provides a response to the request which was made on 24 September 2019.
15. The remaining area of complaint regarding this request is therefore whether the council's response met with the time requirements to respond under the relevant legislation.

Reasons for decision

Did the council consider the request under the correct legislation? – is the information environmental information.

16. The information relates to a revolving loan facility which partly enables the redevelopment of Woking Football Clubs football stadium and a facilitative development of residential housing associated with this.
 17. The Commissioner has firstly considered whether the requested information is environmental information for the purposes of the EIR.
 18. Regulation 2(1) of the EIR defines environmental information as:
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<https://www.woking.gov.uk/sites/default/files/documents/DataTransparency/Loan%20Facility%20Agreement.pdf>

"any information in written, visual, aural, electronic or any other material form 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) and (b) as well as measures or activities designed to protect those elements;..."

19. The Commissioner's well-established view is that authorities should adopt a broad interpretation of environmental information, in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC2, which the EIR enact.
20. It is generally necessary to inspect the requested information in order to ascertain whether or not it is environmental information. Having done so, the Commissioner is satisfied that the information is, at least in part, environmental as it falls within the scope of Regulation 2(c). It is a measure or an activity which is likely to affect the factors outlined in Regulation 2(a). The provision of the loan facilitates the development's which have been agreed between the parties.
21. However, the majority of the information deals with the specifics of the loan agreement and does not fall within the scope of the EIR. This information therefore needs to be considered under the provisions of the FOI Act. It is recognised that the requestor only sought a confirmation or denial of the proposition cited, but the Commissioner is mindful that the council's obligation to answer the 'question' is with reference to the information held.
22. The Commissioner recognises, though, that in this case, the legislation in question makes no significant difference to the outcome of her decision as regards the time which it took for the council to fully respond to the request for information. Both Regulation 5(2) of the EIR and Section 10(1) of FOIA provide for a period of 20 working days to respond to a request.

Regulation 5(2)

23. Regulation 5(1) of the EIR states that:

"a public authority that holds environmental information shall make it available on request."

24. 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."

25. The request for information was received on 24 September 2019. The council informed the complainant that the requested information had been published on its website on 29 November 2019. This was done in relation to another, related request in attempt to deal with both matters.

26. This falls outside of the 20 working days required by Regulation 5(2).

27. The Commissioner's decision is therefore that the Council has breached Regulation 5(2) of the EIR.

FOIA Section 10(1)

28. Section 10(1) of the FOI Act requires that:

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

29. The request for information was received on 24 September 2019. The council informed the complainant that the majority of the requested information had been published on its website on 29 November 2019.

30. This falls outside of the 20 working days required by section 10(1).

31. The Commissioner's decision is therefore that the Council has breached 10(1) of the FOI Act.

Right of appeal

32. 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: 0300 1234504

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

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

Signed

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