

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 21 January 2020

Public Authority: Gloucestershire County Council

Address: Shire Hall,
Westgate Street,
Gloucester,
Gloucestershire,
GL1 2TG

Decision (including any steps ordered)

1. The complainant requested consultation responses received by the council regarding its Cheltenham Transport Plan Phase 4 - Boots Corner. The council refused the request on the basis that Regulation 12(4)(d) (unfinished or incomplete information) applied to withhold the information.
2. On 30 October 2019 the Commissioner issued decision notice FS50836564 requiring the council to respond to the complainant again. The council responded again, relying upon Regulation 12(4)(b) to withhold the information (manifestly unreasonable requests).
3. However, during the course of the Commissioner's investigation the council informed the Commissioner that after reconsidering its position it had now published redacted copies of the information via a weblink and informed the complainant that it had done so. The Commissioner has therefore considered whether the council has complied with Regulation 5(2) of the EIR.
4. Her decision is that it has failed to comply with the requirements of Regulation 5(2) in that it did not disclose the information within 20 working days of receiving the request for information.
5. The Commissioner does not require the council to take any steps.

Request and response

6. On 18 January 2019 the complainant wrote to the council and requested information in the following terms:

"Under the Freedom of Information Act I would like to request access to view the responses to the survey for the Cheltenham Transport Plan Phase 4 – Boots Corner. I would like to review all responses submitted to date, due to potential data protection issues I require these results to be desensitised not to include personal data of name, number email and address but allowing for time, date and response detail and whether formal or general.

I will prefer the responses to be in an Excel table, but would accept Word or pdf format."

7. The council responded on 20 February 2019. It said that section 22(1) of FOIA applied (information intended for future publication).
8. The complainant requested that the council review its decision on 21 February 2019. The council wrote to the complainant upholding its decision on 20 March 2019.
9. The complainant then made a complaint to the Commissioner on 11 April 2019 to complain about the way his request for information had been handled.
10. The Commissioner's decision was issued on 30 October 2019. It required the council to reconsider the request and to issue a fresh response within 35 days.
11. The council responded to the complainant on 3 December 2019. It withheld the information under Regulation 12(4)(b) (manifestly unreasonable).
12. On 5 December 2019 the complainant made a fresh complaint to the Commissioner regarding the council's refusal of his request under Regulation 12(4)(b).
13. The Commissioner contacted the Council on 9 December 2019 asking it questions relating to the application of Regulation 12(4)(b) to withhold the information.
14. On 16 December 2019 the complainant contacted the Commissioner to say that he had been informed by a third party that the information requested was now available from a weblink, but the council had not informed him that that was the case.

15. On 18 December 2019 the council wrote to the Commissioner and informed her that having reconsidered its position it had decided to carry out the necessary work in order to be able to publish the information, and it provided a link to where that information was available. It also said that it had informed the complainant that that was the case on 17 December 2019.

Scope of the case

16. The complainant contacted the Commissioner 5 December 2019 to complain about the way his request for information had been handled. He considered that the information should have been disclosed to him
17. Following the disclosure of the information, the Commissioner spoke to the complainant by telephone on 9 January 2020. The complainant accepted that he had now received the information falling within the scope of his request. He said however that he wanted the Commissioner to issue a decision notice recognising the delay between him making his initial request and in him actually receiving the information.
18. He said that he had wanted the information in order to be able to prepare to make representations for a council committee meeting regarding the changes to the road network. However, the delays prior to it being provided to him meant that he had only received the information very shortly after this meeting had taken place.
19. The Commissioner considers therefore that the outstanding area of the complaint regards the time which the council took to respond to the complainant's request for information, and whether that was in compliance with the requirements of the EIR.

Reasons for decision

Regulation 5(2)

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

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

21. 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.”

22. The request for information was received by the council on 18 January 2019.

23. The council informed the complainant that the majority of the requested information had been published on its website on 17 December 2019.

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

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

Right of appeal

26. 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

27. 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.
28. 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