

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

**Decision notice**

**Date:** 27 August 2020

**Public Authority:** Doncaster Metropolitan Borough Council  
**Address:** Civic Building  
Waterdale  
Doncaster  
DN1 3BU

**Decision (including any steps ordered)**

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1. The complainant made four requests concerning planning and parking matters. Doncaster Metropolitan Borough Council ("the Council") noted that all the relevant information it held was already reasonably accessible and therefore relied on section 21 to withhold that information.
2. The Commissioner's decision is that the Council should have dealt with requests 1, 2 and 3 under the EIR, but would have been entitled to rely on regulation 6(1)(b) of the EIR to refuse to provide information which was already publicly accessible. In respect of request 4, the Council was entitled to rely on section 21 in the manner that it has done. On the balance of probabilities, the Council holds no additional information within the scope of any of the requests. However, in failing to issue a refusal notice in respect of any of the requests within 20 working days, the Council breached regulation 14 of the EIR in respect of requests 1,2 and 3 and section 17 of the FOIA in respect of request 4.
3. The Commissioner does not require any further steps to be taken.

**Request and response**

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4. On 23 March 2020, the complainant made four requests for information to the Council as follows:

Request 1

*"How long an LPA (Local Planning Authority), in this case Doncaster Metropolitan Borough Council (DMBC), has to refund the payment made for a submitted and accepted planning application that they have failed to decide upon within the required timeframe."*

Request 2

*"If a further fee is payable to an LPA (Local Planning Authority), in this case Doncaster Metropolitan Borough Council (DMBC), and if so, how much and when, to make minor and immaterial submissions to amend a previously submitted and accepted planning application that they have failed to decide upon within the required timeframe."*

Request 3

*"[1] Where the obligation comes from to display personal information in a physical format in a public place regarding the applicant making a planning application (for example, on a lighting column in the vicinity of the property/building that relates to the planning application).*

*"[2] With reference to point number one above, if there is an obligation, in what format, in what location and for what duration (days/weeks) does this relate to?"*

*"[3] Regarding duration, whose responsibility is it to then remove personal information on display in a physical format in a public place regarding the applicant making a planning application?"*

Request 4

*"What the obligations are of Doncaster Metropolitan Borough Council (DMBC) to enforce the parking restrictions in place on Rectory Gardens Doncaster (DN1 2JU) and the area in a 250m radius surrounding the intersection of Rectory Gardens where it joins Thorne Road."*

5. The Council responded to requests 1, 2 and 3 on 10 June 2020 and request 4 on 2 July 2020. In respect of all four requests, it refused to provide the information that it held and relied on section 21 of the FOIA to do so. The Council provided URLs linking to where the relevant information could be accessed.
6. The complainant sought internal reviews in respect of all four requests. The Council upheld its position in relation to requests 1, 2 and 3 on 16

July 2020, but provided printouts of the information. The Council completed its internal review of request 4 on 5 August 2020. It upheld its original position.

## Scope of the case

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7. The complainant first contacted the Commissioner on 14 May 2020 to complain about the way his request for information had been handled.
8. On 27 July 2020, the Commissioner wrote to the complainant to set out her view that the information the Council had withheld was demonstrably available. The complainant refused to withdraw his complaint telling the Commissioner that:

*"The information is not reasonably accessible as it is not satisfied by either the attachments or the URL's previously provided to me. With regards to the attachments and as per the URL's previously provided to me, my FOI requests remain unsatisfied as I am unable to locate the information that I have requested. I would be grateful if you can highlight the sentence etc. where you believe the information is located that satisfies each of my FOI requests."*

9. Given that neither the FOIA nor the EIR require public authorities to answer specific questions, only to provide information already held in recorded form, the Commissioner has therefore gone on to consider whether the Council holds any further relevant information in recorded form.
10. The complainant asked the Commissioner to issue a separate decision notice in respect of each request. Given the common themes underlying the requests, the Commissioner considers that issuing separate decision notices would be a poor use of both her own resources and those of the Council. She has therefore addressed all four requests within a single decision notice – although the notice provides a discrete decision in respect of each request.

## Reasons for decision

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*Would the requested information be environmental?*

11. Regulation 2(1) of the EIR defines environmental information as being information 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)...as well as measures or activities designed to protect those elements;*
  - (d) reports on the implementation of environmental legislation;*
  - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and*
  - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);*
12. As requests 1, 2 and 3 seek information relating to planning matters, the Commissioner believes that any additional information the Council held would be likely to be information about "measures" affecting the elements of the environment. For procedural reasons, she has therefore assessed this case under the EIR. The Council confirmed in its submission that, on reflection these requests would fall under the EIR, but noted that this did not affect its substantive position.

*Regulation 6(1)(b)/Section 21 – information accessible*

13. Regulation 6(1) of the EIR states that:

*Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless—*

- (a) it is reasonable for it to make the information available in another form or format; or*

- (b) the information is already publicly available and easily accessible to the applicant in another form or format.*

14. Section 21 of the FOIA states that:

- (1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.*
- (2) For the purposes of subsection (1)—*
- (a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and*
- (b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.*

15. Whilst the precise wordings of the relevant clauses are different, their effect is broadly similar: a public authority is entitled to protect its scarce resources by refusing to provide information which a requestor can already access without having to make an information request. These provisions also act as additional incentives to public authorities to make as much information as possible available on a proactive basis so as to reduce the numbers of requests.
16. In the case of all four requests, the Council provided links to either specific pieces of legislation or to government guidance which it believed was relevant to the request. None of the websites linked to contained paywalls or required any form of subscription in order to access the particular information. The Commissioner notes that the links all work and the complainant has put forward no reason to explain why he was unable to access the information available at each link.
17. The Commissioner is therefore satisfied that the information that the Council referred to in its responses to requests 1, 2 and 3 is both publicly available and easily accessible to the complainant online. The Council would therefore have been entitled to rely on regulation 6(1)(b) to refuse to provide further copies (although the Commissioner notes that, at the internal review stage, the Council – whilst under no obligation to do so – provided hard copies of the information to the complainant).

18. The Commissioner is also satisfied that, in respect of request 4, the withheld information is reasonably accessible to the complainant and therefore exempt from disclosure under section 21 of the FOIA.

*Is further information held?*

19. Regulation 5(1) of the EIR states that: *"a public authority that holds environmental information shall make it available on request."*

20. Section 1(1) of the FOIA states that:

*Any person making a request for information to a public authority is entitled –*

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him.*

21. Section 84 of the FOIA clarifies that "information" in this context means "information recorded in any form."
22. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. Finally, she will consider any reason why it is inherently likely or unlikely that information is not held.
23. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.

*The complainant's position*

24. As the Commissioner understands it, the complainant's position appears to be that the information which the Council has provided does not address his very specific queries. As the information does not address his queries, it follows (he argues) that his request has not been satisfied.

*The Council's position*

25. In both its internal reviews, the Council argued that it had pointed the complainant towards the relevant information and that no additional information within the scope of any of the requests was held.
26. In respect of request 1, the Council argued that it held no specific information about the timescales for the refunding of planning fees. The guidance it has cited notes that planning fees should be refunded if an application has not been dealt with on time.
27. In respect of request 2, the Council confirmed that its approach was determined by the requirements of the legislation and the Government's guidance and that it held no internal policies of its own.
28. In respect of request 3, the Council accepted that it held no specific policy which determined when planning notices (which the Council is required to display as a matter of law – see below) should be removed from display. However, it noted that, as a result of the request and the Commissioner's intervention, it had advised its Planning Services staff to remove any notices they encountered on site visits where the notice period had expired. The Council also noted that it intended to update the communications it sent to applicants and their agents to make it clearer that they were entitled to remove expired notices.
29. In response to the Commissioner's query, the Council noted that its privacy notice referenced the fact that it would sometimes process personal data for the purposes of serving statutory notices but contained no specific information about this process (the privacy notice is, in any case, already in the public domain).
30. In respect of question 4, the Council noted that its approach was determined by the relevant legislation and guidance and that it did not have its own policies or procedures.

*The Commissioner's view*

31. On the balance of probabilities, the Commissioner is satisfied that the Council holds no further information in recorded form. This outcome would be the same regardless of whether the request was handled under the FOIA or the EIR.
32. The complainant appears to believe that the legislation entitles him to receive answers to the questions he wishes to ask. It does not. Both the FOIA and the EIR entitle a person to receive the information which a public authority holds in recorded form at the time it is requested. A public authority is not required to create information to satisfy an information request.

33. In this particular case, the complainant has asked the Council to explain what it should do in very specific circumstances. The Commissioner accepts that a public authority cannot be expected to hold a dedicated policy for every possible permutation of the services it is required by law to provide. In many cases, the public authority's role is defined either in legislation or in statutory guidance – in which case a public authority might potentially be in breach of its obligations if it operated according to its own policy. The legislation sets a framework, within which public authorities are afforded a certain degree of discretion to operating and enforce. This discretion will not always be codified.
34. The complainant informed the Commissioner that none of his requests had been satisfied because he was “unable to locate the information I have requested” implying that the Council had not provided any relevant information. This is demonstrably not true.
35. To take just one example, elements [1] and [2] of request 3 seek information on the Council's obligation to advertise planning applications and include personal data in that advertisement. In response, the Council drew the complainant's attention to the Town and Country Planning (Development Management Order)(England) Order 2015. Section 15(3) of the order specifies that a local planning authority must publicise a “requisite notice” giving details of any application:
- (a) *by site display in at least one place on or near the land to which the application relates for not less than 21 days; and*
  - (b) *by publication of the notice in a newspaper circulating in the locality in which the land to which the application relates is situated.*
36. Section 15(10) further explains that:
- “requisite notice” means notice in the appropriate form set out in Schedule 3 or in a form substantially to the same effect.*
37. Schedule 3 sets out a template notice which local planning authorities should use when advertising an application for planning consent. The wording of the section makes clear that the notice should be displayed “*by site display on or near the site or served on owners of adjoining land.*” The template notice clearly includes spaces in which the applicant's name must be inserted along with the address or location for any proposed development. Therefore the information which the Council has highlighted clearly sets out the Council's obligation to include a limited amount of personal data, in a notice which is physically displayed in public and specifies the timeframe in which this must be displayed.

38. In respect of the other requests, the Commissioner considers that, where the Council has not provided the information that the complainant apparently wants, it is because it simply does not exist. For example, the Commissioner struggles to believe that Rectory Gardens is such an unusual piece of highway that it requires its own dedicated parking enforcement strategy – and the complainant has put forward no reasoning to suggest why this would be the case.
39. The wording and tone of the complainant's requests suggest that they have emerged out of more wide-ranging disputes he has had with the way the Council discharges its obligations. The complainant may or may not be justified in believing that the Council is not complying with those obligations (although the Commissioner expresses no view either way and it would be for other bodies to determine), but this does not amount to evidence indicating that further information is held in recorded form.
40. Whilst the Commissioner accepts that the complainant may not have found the precise answer he was looking for, she does not consider that the Council holds any further information beyond that which it has applied regulation 6(1)(b) of the EIR and section 21 of the FOIA to withhold.

#### Procedural Matters

41. When a public authority wishes to refuse a request for environmental information, regulation 14(2) of the EIR requires the issuing of a refusal notice within 20 working days following the date of receipt of that request.
42. The Council did not respond to any of the requests within 20 working days. Therefore in respect of requests 1, 2 and 3 it breached regulation 14 of the EIR.
43. Section 17(1) of the FOIA imposes an equivalent obligation to regulation 14(2) of the EIR in respect of requests which would fall under the FOIA.
44. As the Council failed to respond to request 4 within 20 working days, it therefore breached section 17 of the FOIA.

## Right of appeal

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45. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

46. 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.
47. 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 .....**

**Phillip Angell**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**