

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 11 February 2022

Public Authority: Bristol City Council
Address: The Council House
College Green
Bristol
BS1 5TR

Decision (including any steps ordered)

1. The complainant requested information on Bristol City Council (the council) decisions to fell trees. He asked the council to provide the requested information via public access to the live database used by its officers when these decisions are recorded. The council said that it does not record details of the reasons why trees are felled on this database. It also said that it was not reasonable under the circumstances for it to provide live public access to the database used by its tree officers. It therefore provided some of the information which it holds which falls within the scope of the request by email.
2. The Commissioner's decision is that the council was not correct to state that all relevant information had been disclosed. His decision is that the council holds further information in the form of relevant sections of its database which has not been disclosed to the complainant in response to his request for information.
3. He has however decided that it was correct to apply Regulation 6(1)(a) to refuse to provide the complainant with the information in the format in which he requested it.

4. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
 - Disclose copies of the relevant entries on its Confirm database to the complainant (with personal data redacted).
5. The council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

Request and response

6. On 16 November 2020 the complainant wrote to the council and requested information in the following terms:

"Pursuant to Regulation 5 of the Environmental Information Regulations 2004, please make available such environmental information held by you, or inform me of the place where the information can be found, which relates to decisions made by you from time to time to fell council-owned trees.

In accordance with Regulation 6, my request is for the information to be made available in a machine-readable form via a publicly accessible URL link (such as data published via the Council's maps.bristol.gov.uk ARCGIS servers) so that, as the information is amended or updated, the changes made will be reflected whenever the data is accessed via the link provided.

The information provided should disclose, as a minimum, the site code and plot number of the tree to be felled, date the decision to fell it was made and the reason for the decision."

7. The council responded on 14 December 2020. It disclosed photographs of trees to be felled with details of the public felling notice included on a laminated piece of paper attached to the tree. However, it said that it was not able to disclose the information in the format in which the complainant requested it; via live access to the database used by its officers onsite. This database is known as "Confirm".
8. The council also said that it does not record (and therefore does not hold) any information relating to the reasons why officers decide that trees should be felled, other than that noted on the laminated sheet; the tree felling notice.

9. It also redacted personal data of some officers from the information which it disclosed. The complainant did not however raise this as an issue.
10. The complainant requested an internal review on 17 December 2020.
11. Following the internal review, the council wrote to the complainant on 7 March 2021. It noted that its initial response was in error and that the request was for information relating to the decisions and reasons to fell trees rather than tree felling notices. It said, however, that this information was not held.

Scope of the case

12. The complainant contacted the Commissioner on 6 April 2021 to complain about the way his request for information had been handled.
13. He considers that the council can provide live access to the Confirm database in order that the public can access information on the decision to fell trees. He also considers that the council has failed to provide him with all of the information which he asked for, and pointed out that he had not received details of the site code and plot number of the tree to be felled, nor the date the decision to fell particular trees was made.
14. The Commissioner considers that the complainant's request can be broken down into two aspects:
 - a) the request is for all information currently held by the council in relation to decisions to fell trees, and
 - b) that the council makes this information available in the format in which he has requested it: by allowing the public live access to its database, Confirm.
15. The Commissioner considers that the complaint is that the council has failed to provide all of the information falling within the scope of part a) of the request, and that it has refused part b) of the request.

Reasons for decision

Regulation 5(1) – duty to provide information upon request

16. Regulation 5(1) of the EIR provides that, subject to an exception being applicable, a public authority that holds environmental information shall make it available on request.
17. The request in this case is for information held by the council as to why it fells council-owned trees. As a minimum, he has requested *“the site code and plot number of the tree to be felled, date the decision to fell it was made and the reason for the decision”*.
18. The council’s position was that all relevant information held at the time of the request had been disclosed to the requester. It disclosed copies of its tree felling notices – photographs of the document which its tree officers attach to trees which state that the tree has been listed to be felled, and provides a very brief description as to why that is the case.
19. The complainant clarified that he believes that the information falling within the scope of his request should include:
 - i. The site code and plot number of the tree to be felled.
 - ii. The date the decision to fell it was made.
 - iii. The reason for the decision.
20. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
21. In other words, in order to determine such complaints, the ICO must decide whether on the balance of probabilities a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request).

The complainant's arguments

22. The complainant considers that the council’s response did not provide the information for the first two parts of his request. He argues that:

‘It is clear from the Tree Felling Notices provided, that the tree officer must have had access to electronic information when they prepared the notice. This is because the site name and the tree’s number are recorded on the form. I believe that this information would have been available to the officer while they were on site via the Council’s

electronic asset register, Confirm. If this is not the case, then it is reasonable to assume that they would have recorded their decision when they next has access to Council's electronic asset register, Confirm.

I understand that this software enables the officer to access and, I believe, record key information about each tree in real time as it is surveyed by them and to note, I believe, the fact that a decision has been made to have the tree removed and the reason why. It is this information that I am asking for.'

On this basis, at least points 1 & 2 of my request are indeed held in electronic form - whether or not it has been transcribed from the information I have been sent.

The council's arguments

23. The council said that it has provided copies of the photographs which it holds to the complainant in response to his request, however the complainant believes that further information should be held. As the complainant notes the photographs include details such as the site name and the tree's number, as these are recorded on the form.
24. It said that officers on site do have access to the council's database to verify information about particular trees via its asset database - Confirm - but that the reason why a decision is taken to fell a tree is not held on this database. The officer's reason is explained on the tree felling notice itself.
25. It clarified the process which its officers take when a decision is made to fell a tree. The officers on site complete a laminated sheet on which they record details of the intended felling, and the reasons for that decision. The Tree Felling Notice's details are hand-written on site using a permanent marker on a laminated paper template at the time that decision to fell is made. This hard copy form is then attached to the tree as a notice to the public of the council's intentions, and a photograph is taken of it and emailed to the local councillor in order to inform the local community's representatives of the council's decision.
26. The council explained that the tree officer then records that a tree is set to be felled by issuing an instruction to the tree-felling contractor via a job on the asset management database as a Schedule of Rate (SOR) item. This consists of a request to fell a tree relating to trunk size (DBH

- Diameter Breast Height) band - it does not contain any information relating to why the tree needs to be felled, and it therefore argues that this falls outside of the scope of the complainant's request for information.
27. It confirmed that the relevant information will be held in both an electronic and a manual format. The tree felling notices are in manual form, attached to the tree, and the photograph is emailed to councillors so will be held in an electronic format.
 28. The council said that it carried out searches of the sent emails from its tree officers. The search term for emails was "Tree Felling Notice" or "Felling Notice". Manual searches were also conducted of all emails sent to Councillors which had attachments. All relevant information it located was disclosed in response to the complainant's request. The information which was disclosed was photographs of the tree felling notices. These contain a very brief note of the reason why the decision to cut the tree down has been made, together with details of the site name and tree number.
 29. It said that *"We have searched for emails sent by Tree Officers to local Councillors informing them of the intention to fell a tree, the tree location, the tree plot number, the reason for felling, if a sponsorship tree planting location is applicable and the date the notice was posted. This information takes the format of a photograph of the Tree Felling Notice on the tree itself as proof that the notice has been posted. The Tree Felling Notice's details are hand-written using a permanent marker on a laminated paper template at the time the notices are affixed to the tree."*
 30. It said that the manual Tree Felling Notice is "held" until the tree's destruction by felling and wood processing. It does not have a procedure to retain the manual notices upon the removal of the tree.
 31. Electronic copies are held for a period of time in the 'sent items' of the officer providing notice to a councillor, however these are periodically cleared along with all other sent items due to space limitations.
 32. The council said that whilst it might be able to calculate when a hard copy tree notice had been destroyed, by using the date that the tree was actually felled, no specific record of the destruction of the manual notice will actually be made.
 33. The council noted that the complainant believes that the 'site code' and 'plot number' of the trees either felled, or due to be felled, was not provided, however it argues that this information was disclosed on the Tree Felling Notices in the form of the site name and tree number.

34. The council therefore maintains its position that all information held by the council at the time of the request has been disclosed to the requester.

The Commissioner's analysis

35. The Commissioner has considered the council's position, in conjunction with the request.
36. The council has confirmed to the Commissioner how it records the decision to fell trees, and who is informed, and when. It has provided copies of the photographs of the felling notices, which contains the majority of the information which the complainant requested, albeit with different labels attached to some of the specific information he stated he wished as a minimum.
37. However, the Commissioner also requested a copy of the confirm database and has looked at the fields relevant to the SOR and the DBH band. The council said that the completion of these sections of the database indicates to the contractor that the tree needs to be felled and provides information on the size of the tree in question. It also provides details of the site, ward and area (although the latter may be personal data in some instances). There is also a notes section which allows officers to write in the actions which should be taken by the tree feller, such as the height to cut it down to and whether the roots should be poisoned etc.
38. The Commissioner recognises that the council is correct in that the entry does not provide information on the reasons why the tree needs to be felled. However, he considers that this information does fall within the scope of the complainant's request, which was for information '*which relates to decisions made by you from time to time to fell council-owned trees*'. The completion of these fields provides information which relates to a decision to fell a council owned tree. It is the order to do so, and information relevant to the order.
39. On this basis the Commissioner has concluded that, on the balance of probabilities, further information is held by the council.
40. He therefore requires the council to also disclose print outs from its Confirm database for the trees in relation to which it previously disclosed the photographs of the felling notices.

Regulation 6 - form and format

41. The complainant requested that the information he has requested be provided via live access, via a public URL, and provided in a machine-readable format. He said that:

"The Council uses Asset Management Software to help it maintain a record of the trees it manages across the city. Each record contains information about each tree, including information about decisions to remove a tree.

Whilst some of the information it maintains is made available live on various public platforms – e.g., via Open Data Bristol, Pinpoint and the Council's ArcGIS servers, the information about tree removal is not.

My request is for this information to be made available on these platforms."

42. Regulation 6(1) provides 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 it is reasonable for it to make the information available in another form or format, or the information is already publicly available and easily accessible to the applicant in another form or format.
43. In requesting that the council review its decision, the complainant also argued that it was reasonable for the council to disclose this information in the format he had requested due to the obligation placed on it by Regulation 4. Regulation 4 requires public authorities to progressively make information available to the public by electronic means which are easily accessible; and that they take reasonable steps to organise the information relevant to their functions with a view to the active and systematic dissemination to the public of the information.
44. The council argues that it is not reasonable under the circumstances for it to provide the information to the complainant in this format. It explained that in order to provide the information in a live format the council would have to undertake a further process in addition to its existing procedures. It said that the content of the Tree Felling Notices would need to be converted into a machine-readable format and a new layer in the council's system would need to be created in order to contain the data.

45. It argued that it would be unreasonable and place an undue burden on council staff to take these steps. It said that whilst it recognises the benefits of making numerous types of information live which could be generated from its manual records, such as park maintenance records, doing so would place an undue burden on the resources available to it. It has not therefore carried out this process.

The Commissioner's analysis

46. The Commissioner recognises the benefits which responding to the complainant's request in the format requested would bring. Members of the public would be able to obtain information on trees marked for destruction by simply visiting the relevant section of the council's website. Information of this sort would enable the public to monitor the council's decisions as regards particular trees almost immediately after decisions are taken by its officers.
47. On the counter side, the Commissioner also notes that there are many calls upon council resources and funds, and that it must manage and prioritise the use of its resources in order to ensure that it is able to fulfil its core functions.
48. Whilst the council recognises the benefits providing the public with live access to information of this sort would bring, it argues that it needs to manage its resources carefully, and that these resources need to be expended elsewhere. It also accepts that it would be beneficial to disclose other types of information in this way, but it does not do so for this reason.
49. The Commissioner notes that the complainant's format request goes beyond the provision of the information he has requested. The format in which he has requested the current information would result in him gaining ongoing, live access to future information in a similar vein, so that he is able to access information without having to make further requests to the council for it. This goes beyond the scope of Regulation 5, which stipulates that information should be available 'on request', and relates to requests for information which is already held, not information which will be created in the future.
50. The Commissioner accepts that under the circumstances, asking the council to create additional processes in order to facilitate the complainant's preferred format to access the information would be unreasonable, albeit that he recognises the benefits that that may bring as regards transparency and allowing greater access to council information in a more easily accessible format.

51. The Commissioner's decision is therefore that the council was able to apply Regulation 6(1) to refuse to provide the information in the format requested in this instance.

Right of appeal

52. 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

53. 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.
54. 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

Ian Walley
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