

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 14 June 2022

Public Authority: Bolton Council

Address: Town Hall
Bolton
BL1 1RU

Decision (including any steps ordered)

1. The complainant has requested information with regards to Blue Parking Badges. Bolton Council (the council) responded that the information was not held.
2. The Commissioner's decision is that on the balance of probabilities, no information is held falling within the scope of the request.
3. As the Commissioner has found that the information is not held, he does not require the council to take any steps.

Request and response

4. On 28 August 2021 the complainant submitted the following information request to the council:
 1. "Please provide the number of residents Councillor [name redacted] has helped to obtain a Bolton Council Blue Parking Badge who do not have a severe mobility problem.
 2. Please provide the total number of Blue Parking Badges which have been issued by Bolton Council to applicants who do not have a severe mobility problem.
 3. Please provide the number of other Bolton Councillors who have assisted residents to obtain a Blue Parking Badge who do not have a severe mobility problem."
5. The council responded on the 28 September 2021 stating that the information is not held. On the same day the complainant contacted the Commissioner to complain about the council's response.
6. On advice from the Commissioner, the complainant requested the council to undertake an internal review on 7 October 2021.
7. The council provided the internal review response on the 11 October 2021 upholding its initial response.

Scope of the case

8. The complainant contacted the Commissioner again dissatisfied with the council's response that the information is not held and the time it has taken to respond.
9. The scope of the case is for the Commissioner to firstly determine whether the information requested falls under the FOIA or the EIR and then whether the council holds any information falling within the scope of the request.
10. The Commissioner will lastly determine whether the council has breached the timeframe for responding under the relevant regime.

Reasons for decision

Is the requested information environmental information?

11. The Commissioner has first considered whether the requested information constitutes environmental information as defined by regulation 2(1) of the EIR.
12. The Commissioner has considered the findings in a First Tier Tribunal Decision EA/2020/0308P¹ which stated at notable paragraphs:

“25. The Department submits, and the Panel agrees, that the Blue Badge Scheme is a ‘measure’ which affects a range of environmental issues including the number, location, and type of parking bays; congestion in city centre locations; impact on the pedestrian areas in urban areas and thus land use; and increased use of private vehicles.

26. The Panel also considers that the number of Blue Badges issued will decrease use of public transport, increase the number and distances of journeys by private cars by Blue Badge holders and hence increase the emissions and pollution emanating from such vehicles.

29. Taking all the above into account, in the Panel’s view the information sought by Mr O’Farrell about the Blue Badge Scheme satisfies the definition of ‘environmental information’ as defined in Regulation 2(1) EIR because it is information on a ‘measure’ (policy and legislation) that affects ‘the state of the elements of the environment’ (air and land) and ‘the factors that affect those elements’ (emissions and roads etc).”
13. The Commissioner therefore concludes in this case, that the complainant’s request also falls under the EIR based on the Blue Badge Scheme being a ‘measure’ (policy and legislation) that affects ‘the state of the elements of the environment’ (air and land) and ‘the factors that affect those elements’ (emissions and roads etc).

¹<https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2896/O'Farrell,%20Sean%20-%20EA.2020.0308%20%20Allowed.pdf>

Regulation 5(1) of the EIR

14. Regulation 5(1) of the EIR states:

“Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these regulations, a public authority that holds environmental information shall make it available on request.”

15. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).
16. In this case the council has stated it does not hold any of the information requested.
17. The council has told the Commissioner that it has contacted its service that deals with Blue Badge applications and it has advised, with regards to parts 1 and 3 of the request, that whilst it does receive enquiries from councillors, who are contacting the council on behalf of constituents, there is no formal process for councillor enquiries and no facility to log and record them.
18. The customer's details would be placed in the Blue Badge system but there is no way to filter it to see if it came via a councillor. Whilst the council may receive phone calls or emails, the records of these transactions are not kept.
19. The council has told the Commissioner that it has also checked with the councillor named in the request, to see if they hold any relevant information, and has confirmed that generally they would just direct constituents to the relevant policy and where to apply online, and does not keep a record of this advice given.
20. With regards to part 2 of the request, the council stated that whilst its guidance says “ the aim of the scheme is to help people with severe mobility problems... ” this is a statement of the overarching aim of the Blue Badge Scheme and cannot be viewed in isolation.
21. For example, a person who is registered blind may qualify for a blue badge but they may have no problem with actual walking.
22. The council has explained to the Commissioner that whilst it can run reports that breakdown the reasons for applications, by criteria such as

"hidden disability" or "walking difficulty", it does not have a criteria to filter by "severe mobility" and so does not hold the information as it is not recorded as has been requested.

23. The Commissioner on review of the council's response to his enquiries, is satisfied with the explanations provided and considers it is reasonable to conclude that the information is not held.
24. Therefore the Commissioner finds on the balance of probabilities, that the information is not held by the council.

Regulation 14(1) of the EIR – refusal notice

25. Regulation 14(1) of the EIR states:

"If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing.

26. Regulation 14(2) requires that a refusal notice is issued no later than 20 working days after receipt of the request.
27. The request was made on Saturday 28 August 2021. Monday 30 August 2021 was a bank holiday. Therefore the actual receipt of the request was Tuesday 31 August 2021.
28. The council responded on 28 September 2021, which is 20 working days following receipt of the request, and therefore within the required timeframe to respond.

Right of appeal

29. 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

30. 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.
31. 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

Ben Tomes
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Wycliffe House
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