

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 10 January 2023

Public Authority: Rugby Borough Council
Address: Town Hall
Evereux Way
Rugby
CV21 2RR

Decision (including any steps ordered)

1. The complainant requested from Rugby Borough Council ("the Council") information relating to the transfer of land to a third party by way of a lease. The Council disclosed some information and withheld the remainder under section 43(2) (commercial interests) of FOIA.
2. The Commissioner's decision is that the information is environmental, and that that the Council should have considered the request under the EIR. In respect of the withheld information, the Commissioner has considered whether the Council is entitled to rely upon the equivalent part of the EIR - regulation 12(5)(e) (confidentiality of commercial or industrial information) - but is not satisfied that the Council has demonstrated that it is engaged. In respect of whether the Council has identified all relevant information that it holds, the Commissioner is satisfied that the Council has identified all recorded information it holds that falls within the scope of the request.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Disclose the withheld information.

4. 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

5. On 14 December 2021, the complainant wrote to the Council and requested information in the following terms:

"- under which parliamentary act/section has this disposal been decided - I reckon RBC should very well know under which parliamentary act/section can dispose of public land;

- copy of the lease agreement between RBC [Rugby Borough Council] and CLC [Christian Life Centre] regarding the public car park at the rear of Pinfold Street (including any addendums if any) - this document has been finalised recently, it should be under scrutiny right now, can't see any reason why I have not yet received a copy of it;

- copies of RBC's decision to approve the lease and of the documents based on which the decision to grant the lease has been taken (as detailed above in my FOI request): these documents should be under scrutiny right now, all in a file, and must have been also recently accessed by [name redacted by ICO] as a source of inspiration for his letter in response to my first complaint regarding the issue of this lease, can't see any reason why I have not yet received copies of them."

6. The Council responded on 12 January 2022. It disclosed information but stated that some (an evaluation report by a chartered surveyor) was withheld under section 43(2).
7. Following an internal review, the Council wrote to the complainant on 3 February 2022. It maintained the application of section 43(2) and confirmed that some specific information was not held.

Reasons for decision

Is the information environmental?

8. The Council handled the request under the terms of FOIA, and consequently applied the exemption that FOIA provides for information that would prejudice commercial interests.

9. The withheld information concerns the evaluation of a plot of land by a charterer surveyor. As such the Commissioner is satisfied that the information is environmental information under regulation 2(1)(c) of the EIR¹. The Commissioner has therefore concluded that the Council was incorrect to handle the request under FOIA and should have done so under the terms of the EIR.

Regulation 12(5)(e) – Confidentiality of commercial or industrial information

10. This reasoning covers whether the information can be withheld because it was commercially sensitive.
11. Information can be withheld under regulation 12(5)(e) of the EIR if disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.
12. The Council has explained to the Commissioner that disclosure of the information would harm the Council's negotiating position in any negotiations relating to the plot of land. The Council has further explained that it undertakes regular commercial negotiations to best manage its asset portfolio. Should the report be disclosed to the public it would set a harmful precedent which would prove detrimental to such negotiations.
13. The Commissioner has considered the Council's position. Having done so the Commissioner is not satisfied that disclosure would adversely affect its economic interest. In particular, the Commissioner notes that the information was over four years old by the time of the request, and there is no explanation of why, in the specific circumstances of this case, disclosure would adversely affect the Council's economic interest in respect of the plot of land – which the Commissioner understands had already been transferred to a third party by way of a lease.
14. Whilst the Commissioner recognises that this type of information may sometimes fall under the exception, particularly in regards live or anticipated negotiations, he considers that in this case the Council has had three opportunities to formulate compelling arguments for why the information in this case is commercially sensitive (at response stage, at

¹ <https://www.legislation.gov.uk/ukxi/2004/3391/regulation/2/made>

internal review, and following the complaint to the Commissioner) – but has failed to do so.

15. Having considered the above, there is no evidence available to the Commissioner that would indicate regulation 12(5)(e) is engaged. He therefore concludes that it is not engaged and at paragraph 3 above orders the Council to disclose the information withheld under this exception.

Regulation 12(4)(a)

16. This reasoning covers whether the Council has disclosed all remaining held information.
17. Regulation 12(4)(a) of the EIR states that a public authority may refuse to disclose information “to the extent that it does not hold that information when an applicant’s request is received”.
18. 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, or further information which falls within the scope of the request (or was held at the time of the request).
19. The Commissioner has reviewed the Council’s response and internal review of the request. In these the Commissioner notes that the Council has confirmed what information has been identified and explains why no further information is likely to be held. In particular, the Commissioner notes that the Council has explained that the comments included in an earlier letter (a complaint outcome dated 9 November 2021) are based on local knowledge rather than specific recorded information such as formal records of anti-social behaviour or maintenance costs.
20. The Commissioner emphasises, for the benefit of the complainant, that the EIR only relates to recorded information. A public authority is not required to create an answer, or otherwise justify an action or comment, in order to comply with the EIR.
21. There is no evidence available to the Commissioner that the Council has failed to consider all held information that falling within the scope of the request.
22. The Commissioner is therefore satisfied that, on the balance of probabilities, the Council does not hold further information within the scope of the request.

Right of appeal

23. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

24. 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.
25. 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

Daniel Perry
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF