

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 9 December 2022

Public Authority: Birmingham City Council
Address: Council House
Victoria Square
Birmingham
B1 1BB

Decision (including any steps ordered)

1. The complainant has requested information from Birmingham City Council ("the Council"), in relation to a specific building. The Council provided some information, but refused the remainder under section 21 of FOIA – information accessible by other means. The Council also explained that a third party may hold some further information.
2. The Commissioner's decision is that the Council should have responded under the EIR, as the request relates to planning and building regulations. However, as the exemption applied is similar in nature to that under the EIR, the outcome would be the same. The Council should have instead relied upon regulation 6(1)(b) – information available elsewhere. The Council breached regulation 14(3) of the EIR as it incorrectly issued its refusal under FOIA and not the EIR.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Request and response

4. On 31 January 2022, the complainant wrote to the Council and requested information in the following terms:

"Are there any outstanding statutory notices, breaches of planning or building regulations that relate to the Cube."

Are there any proposals for new roads, rail schemes or planning decisions that could affect the Cube.”

5. The Council responded on 24 February 2022. It provided a response to some parts of the request. However, it went on to advise that some information regarding a specific application was with another company and provided an email address for them. It also advised that the remaining information was already available publicly and therefore it was relying on section 21 of FOIA – information accessible by other means. The Council provided links for the further information, explaining what could be found at each of the links.
6. Following an internal review the Council wrote to the complainant on 24 March 2022. It stated that it upheld its original position, however the original response could have been clearer and therefore provided some further clarification.

Scope of the case

7. The complainant contacted the Commissioner on 28 February 2022, to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of the investigation is to determine if the Council was correct to say the information is reasonably accessible by other means.

Reasons for decision

Regulation 5(1) – duty to make environmental information available

Is the requested information environmental?

9. 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; 14.

10. The Commissioner considers that, as the requested information is for planning applications, building regulations and proposals for new roads, it falls under regulation 2(1)(c), due to the information relating to plans likely to affect the element and factors referred to in 2(1)(a). The Commissioner therefore considers that the request should be dealt with under the EIR.

Regulation 6(1)(b) – publicly available and easily accessible

11. 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.”

12. The Council provided several links to information relating to planning/building applications which fall under the complainant's request.
13. The Council also provided the complainant with an email address for a third-party company, who may hold further information.
14. The Commissioner notes that the complainant has advised that the third-party company is wholly owned by the Council. The Commissioner asked the Council to clarify if the third party is wholly owned by it, to which the Council confirmed that it is. As such, the complainant can make a request for information under FOIA or the EIR, directly to the third-party company.
15. The Commissioner considers that the information is publicly available and easily accessible within the meaning of the EIR.
16. The EIR place an obligation upon public authorities, but they also provide public authorities with some protection. Where environmental information has already been made available, public authorities can shield themselves from some of the burden of responding to requests –

either because would-be requesters have already found the information for themselves or because the public authority can, when a request has been made, simply point to the information already available. Therefore Regulation 6(1)(b) exists in part to protect public authorities from having to re-provide the same information continually – it also acts as an extra incentive for public authorities to make the environmental information available in the first place.

17. From the information provided, the Commissioner is satisfied that the requested information is available online for the complainant to access. The Commissioner is also satisfied that the Council holds no further recorded information within the scope of the request.

Other matters

18. The Commissioner notes that the complainant has advised that they consider that the Council did not respond to their request within the statutory timeframe. The request was made on 31 January 2022 and the Council responded on 24 February 2022. This is a total of 18 working days and, therefore, the Commissioner is satisfied that the Council did respond within the statutory timeframe.

Right of appeal

19. 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

20. 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.
21. 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

Michael Lea
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF