

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

Decision notice

Date: 18 December 2013

Public Authority: City of York Council

Address: West Offices
Station Rise
York
YO1 6GA

Decision (including any steps ordered)

1. The complainant has made two requests for information to City of York Council ("the Council"). The Council did not respond in full to the complainant's first request within the twenty working day period provided by the EIR and failed to respond to his second request until the Information Commissioner's intervention in this matter.
2. The Commissioner's decision is that City of York Council has failed to comply with regulation 5(2) of the EIR in respect of the complainant's first request and failed to comply with section 10 of the FOIA in respect of his second request.
3. The Commissioner requires no further action to be taken by the public authority in respect of this complaint.

Request and response

4. On 10 May 2013, the complainant wrote to City of York Council ("the Council") and requested information in the following terms:

"I wish to make a freedom of information request in respect of Rowntree Wharf, Navigation Road, York. My specific interest in relation to this is the walkway which is attached to the side of the building and provides an access link between the Shambles car park area and Navigation Road across the River Foss.

I would like to receive all documents from when permission was granted to convert Rowntree Wharf to flats which was the late 1980's to the present day with specific reference to any planning conditions imposed in respect of the walkway, right of way, adoption of the walkway and ownership."

5. The Council wrote to the complainant on 13 May to acknowledge his request and to inform him that he should receive a response by 10 June.
6. On 17 June the complainant wrote to the Council to complain that his request had not been satisfied. The complainant asked the Council to carry out an internal review of its handling of his request and to inform him of the date when he should receive the outcome of the review.
7. The Council acknowledged the complainant's request for an internal review on 18 June. The Council informed the complainant that he should receive a response from its Information Governance Officer by 9 July.
8. On 21 June the Council responded to the complainant's initial request of 10 May. The Council provided the complainant with information relevant to his request which it had collated so far. The information was sent as PDF file attachments and the Council confirmed that the attachments are the electronic records it holds in respect of application 7/05/195E – for the walkway and footbridge from the Shambles to Rowntree Wharf on the south side of the River Foss. The Council's letter informed the complainant that it was still waiting for further information and that it hoped to receive this by 28 June.
9. On 21 June the complainant wrote to the Council again. He referred the Council to his email of 17 June and made a second request for information in the following terms:

"...can you please advise me who is in charge of freedom of information requests at City of York Council. Perhaps you would be good enough to forward me a copy of the council's policy on freedom of information requests."
10. The Council completed its internal review of the complainant's first request and informed him of its outcome on 4 September. The Council apologised for the time taken to complete its review and informed the complainant that it was unable to comply in full to his information request when it made its initial response on 21 June. The Council stated that this was due to difficulties it was experiencing in retrieving documents from its off-site storage and to staff leave and workload pressures. The Council confirmed to the complainant that it had provided him with the remainder of the information on 22 July.

11. On 2 December, following the intervention of the Commissioner, the Council sent the complainant a copy of its Freedom of Information Policy and informed him of the names of the two persons responsible for freedom of information within the Council.

Scope of the case

12. The complainant contacted the Commissioner on 11 July to complain about the way his request for information had been handled.
13. The complainant informed the Commissioner that he was unable to open the email attachments which the Council had sent him on 21 June. Consequently the complainant asked the Council for this information to be sent as hard copies. The complainant stated that he was yet to receive any further information from the Council in respect of his first request.
14. The complainant provided the Commissioner with a chronology relating to his two information requests and stated:

“As you can see from the above timeline the City of York Council have been extremely poor in relation to meeting timescales for my request and have been unable to meet the timescales they have chosen to extend.”
15. On 6 September the complainant provided the Commissioner with further clarification of his complaint. He asked the Commissioner to issue a decision notice in respect of the Council’s handling of his requests and informed the Commissioner that he has still not received the information sought in his second request. The complainant also confirmed that he had now received the Council’s internal review in respect of his first request for information.
16. The Commissioner has noted that the complainant made his complaint before he received the information he sought in both of his requests and before he had received the outcome of the Council’s internal review.
17. The Commissioner’s investigation of this complaint concerned whether the Council had complied with its obligations under regulations 5(1) and 5(2) of the EIR and under sections 1 and 10 of the FOIA.

Reasons for decision

The first request

Regulation 5(1) of the EIR

18. Regulation 2 of the EIR states that environmental information is any information in written, visual, aural electronic or any other material form 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) and (b) as well as measures or activities designed to protect those elements;...”

19. The Commissioner has considered the nature of the information sought by complainant in his first request. The information concerns the planning conditions, rights of way, adoption and ownership of the walkway from the Shambles car park and Navigation Road area of York across the River Foss. The Commissioner has determined that the information held by the Council constitutes environmental information and falls to be considered under the EIR.

Regulation 5 – Duty to make environmental information available on request

20. Regulation 5(1) of the EIR requires a public authority holding environmental information to make it available on request.

21. Regulation 5(2) requires the public authority to make the requested information available as soon as possible and no later than twenty working days after the date of receipt of the request.

22. At the request of the complainant, the Commissioner asked the Council to confirm that it had supplied the complainant with all the information it holds relevant to his first request and to confirm that the hard copies of

information sent to the complainant on 22 July was the same information that had previously been supplied in PDF file format.

23. The Council advised the Commissioner that the information sent to the complainant on 22 July included a duplicate set of information, previously sent on 21 June, plus additional information which had been identified following the Council's searches of its external storage facility.
24. The Commissioner accepts that, on the balance of probability, the Council complied with the complainant's request for information on 22 July and therefore it has satisfied the requirement of regulation 5(1) of the EIR.
25. The Commissioner notes that the complainant made his first request for information on 10 May, some 49 working days before the Council sent him the information he sought. The Commissioner must therefore conclude that the Council has failed to meet the requirement of regulation 5(2) of the EIR.

The second request

26. The Commissioner has considered the information sought by the complainant in his second request. This information cannot be considered as environmental information and therefore falls to be considered under the FOIA. Sections 1 and 10 are relevant to this complaint.

Section 1 FOIA – general right of access to information

27. Section 1(1)(a) of the FOIA states:

"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."

Section 10 FOIA – time for compliance with request

28. Section 10 of the FOIA states:

"Subject to subsections (2) and (3), a public authority must comply with section (1)(1) promptly and in any event not later than the twentieth working day following the date of receipt."

29. In response to the Commissioner's enquiries the Council acknowledged that it had failed to supply the complainant with the information he

asked for in his second request. The Council expressed its regret for this and confirmed that it would be sending the complainant the information he seeks. The Council provided the Commissioner with a copy of its covering letter to the complainant which referred to 'the attached copy of the FOI policy' and which gave the names of its Customer Feedback Team Manager and its Director of Business Support Services as the persons responsible for freedom of information requests within the Council.

30. The complainant confirmed to the Commissioner that he had received the Council's FOI policy and the covering letter referred to at paragraph 30.
31. The Commissioner considers that, by providing the complainant with a copy of its FOI policy and the names of its two officers responsible for FOI requests, it has met the requirement of section 1(1) of the FOIA.
32. The Commissioner finds that the Council has breached section 10 of the FOIA by failing to satisfy the complainant's request within the required twenty working day compliance period.

Right of appeal

33. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

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

34. 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.
35. 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

Andrew White
Group Manager – Complaints Resolution
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