

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 24 September 2014

**Public Authority:** Norfolk County Council  
**Address:** County Hall  
Martineau Lane  
Norwich  
NR1 2DH

#### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to a Private Finance Initiative contract for an 'Energy from Waste' incinerator at Saddlebow, Kings Lynn.
2. The Commissioner's decision is that Norfolk County Council has properly responded to the complainant's request by providing her with recorded information relevant to her request. In doing so the Council has complied with its obligations under Regulation 5(1) of the EIR.
3. The Commissioner does not require the public authority to take any further action in this matter.

#### **Request and response**

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4. On 25 July 2013, the complainant wrote to Norfolk County Council ("the Council") and requested information in the following terms:
  - "1. Please would you provide me with the names of all NCC officials, Councillor and external advisors, who had the opportunity to fully and independently scrutinise the bids by both Cory Wheelabrator and Amey Cespa, before the Preferred Bidder was selected.
  2. Please provide me with the names of all NCC officials, Councillors and external advisors, who had the opportunity to fully and independently scrutinise the contract before it was signed.

3. Please provide me with the names of all NCC officials, Councillors and external advisors, who have had the opportunity to fully and independently scrutinise the contract since the change of administration following the May 2013 election.
4. Please provide me with the names of all NCC officials, Councillors and external advisors who were fully aware prior to the change of administration in May 2013, that the purported figure payable in the event of planning failure or termination would be more than the £20.3m capped figure given to Councillors and released to the public.
5. Please provide me with the names of the NCC officials and Councillors who authorised the media department to release the figure payable in the event of planning failure or termination, as being capped at £20.3m.
6. Please provide me with the names of all the persons who have had sight of the full, unredacted contract who had to individually agree to a confidentiality clause.”
5. The Council responded to the complainants request on 22 August 2013.
6. In response to the first and second elements of the complainant’s request, the Council provided a list of persons involved in the procurement process. The list included those members of the Waste Project Board and members of the Committees and Panels who considered reports relating to the Procurement. The Council provided the job titles for certain individuals but redacted their names in reliance of section 40(2) of the FOIA.
7. The list detailed the Council’s own officers, officers of Kings Lynn and West Norfolk Borough Council, members of the County Council and the County Councils advisors. The Council advised the complainant that a review was undertaken by civil servants in the Department for Environment, Food and Rural Affairs (“Defra”) and HM Treasury. The Council informed the complainant that it did not hold a list of the names of individuals within those departments which had been part of the review.
8. The Council answered the third element of the complainant’s request by advising her that the contract documents, with appropriate redactions, were made available to view on the Council’s website prior to the change of administration in May 2013 and it provided a list of council members who had full access to the unredacted documents since the change of administration.
9. The Council answered the fourth element of the complainant’s request by advising her that it did not hold a list of officers, Councillors or

advisors who may have viewed the £20.3m capped figure. The Council pointed out to the complainant that the capped figure had been made available to view on its website prior to the change of administration.

10. In answering the fifth element of the request, the Council advised the complainant that the capped figure was not released by the Council's media department.
11. The Council advised the complainant that it had not put in place, or had requested the agreement to a confidentiality clause by any of the individuals. The Council informed the complainant that all Councillors and all officers involved in work relating to the contract had been made aware of the Council's confidentiality obligations in relation to parts of the contract. Members and officers are bound by legal obligations relating to confidentiality.
12. On 27 August 2013 the complainant wrote to the Council again. In her email she expressed her dissatisfaction with the way the Council had responded to all of the elements of her request, with the exception of element 6. The complainant asked the Council to answer her request correctly and she provided the Council with clarification of what she expected in respect of her request. The complainant pointed out to the Council that she did not want the questions raised in this email as being treated as a new request under the FOIA.
13. Following an internal review the Council wrote to the complainant on 24 October 2013. The review stated that the complainant's request was very specific and that the Council had provided clear and comprehensive answers to her questions and had provided relevant associated information which it held.
14. The review pointed out that the complainant's email of 27 August contained comments relating to how she had expected her questions to have been interpreted and what she had expected to have received on the basis of her interpretation. The Council determined that the wording of the complainant's request was clear and required no clarification.
15. The Council acknowledged that the questions put by the complainant in her email of 27 August were subtly different from those contained in her original request. The Council explained that it could have logged these questions as a new request, however it had not done so as the complainant had stated that she did not want this. Nevertheless it did provide the complainant with further clarification of its original response, incorporating elements of the complainant's new/clarified questions.

## **Scope of the case**

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16. The complainant contacted the Commissioner on 2 October 2013 to complain about the way her request for information had been handled.
17. On 23 January the complainant sent the Commissioner a copy of the Council's internal review. She advised the Commissioner that she believed the Council had failed to properly answer the questions she had originally asked and which she had subsequently clarified.
18. In view of the complainant's assertion, the Commissioner has considered whether the Council has complied with its duty to provide recorded information under Regulation 5(1) of the EIR.

## **Reasons for decision**

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### **Is the information 'Environmental Information'?**

19. The Council's responses to the complainant have referred to the EIR.
20. Information is 'environmental information' if it meets the definition set out in regulation 2 of the EIR. If the information satisfies the definition in regulation 2 it must be considered for disclosure under the terms of the EIR rather than the FOIA.
21. Under regulation 2(1)(c) of the EIR, any information on activities affecting or likely to affect the elements or factors of the environment listed in regulation 2 will be environmental information. One of the elements listed is land.
22. The Commissioner has considered the nature of the information sought by the complainant. He is satisfied that the information can be construed as being environmental information since it relates to decisions made by the Council concerning the construction of an 'Energy from Waste' Incinerator at Saddlebow, Kings Lynn. The Commissioner therefore considers that the request should be dealt with under the EIR.
23. Under Regulation 5(1) of the EIR a public authority holding environmental information is obliged to make that information available on request.
24. The Commissioner has considered the complainant's request, the Council's response to that request and the Council's internal review. He is satisfied that the Council has complied with its duty under Regulation

5(1) of the EIR by providing the complainant with information relevant to her request.

25. The Commissioner agrees with the Council that the complainant's request was very specific. He accepts the Council's position that it was not necessary to seek clarification of that request from the complainant.
26. The provisions of the EIR extend only to recorded information held by public authorities: They do not require public authorities to create information in order to satisfy a request for information. Where a public authority chooses to interpret its recorded information in order to satisfy a request, it would not be doing so under the EIR and the Commissioner could not require the public authority to do this.
27. The information provided by the Council appears to the Commissioner, 'on the balance of probabilities', to reflect the information which is held in recorded form by the Council and which is relevant to the six elements of the request.
28. In this case the Commissioner considers that the terms of the complainant's request are such that the Council would have some difficulty in providing recorded information which accurately meets those terms. In the Commissioner's opinion the Council would find it problematic to determine the degree to which the contract was 'fully and independently scrutinised' and also to determine the degree that the individuals named in its response had the 'opportunity' to have that scrutiny. Nonetheless, the Commissioner is satisfied that all of the recorded information held that is relevant to the request has been provided.

## Right of appeal

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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@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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 .....**

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**