

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

Decision notice

Date: 16 October 2014

Public Authority: Bradford Council
Address: 4th Floor
Brittania House
Hall Ings
Bradford
West Yorkshire
BD1 1HX

Decision (including any steps ordered)

1. The complainant requested information on a pre-planning submission made to the council regarding a potential development in Bradford. After initially claiming that the information was exempt under section 43 of the Act, the council reconsidered the information and then said that the information was exempt under Regulation 12(5)(c) of the EIR, (intellectual property rights). However the council reconsidered its position again and subsequently disclosed the information to the complainant. The complainant however wishes a decision notice as his view was that the information should have been disclosed to him from the outset.
2. The Commissioner's decision is that the council has failed to comply with Regulation 5(2) which requires that an authority is under a duty to disclose information to a requestor within 20 working days after the date of the receipt of the request (subject to an exemption applying).
3. The Commissioner does not require the authority to take any steps.

Request and response

4. On 8 November 2013 the complainant wrote to the council and requested information in the following terms:

"I am advised that a pre application submission has been made with regard to land bounded by Spen View Lane and Shetcliffe to the west and the old abandoned railway line to the east [safeguarded Land] I believe the application reference 13/02352.

I therefore request that I be provided with the opportunity to have sight of this submission under the provisions of the above Act and Regulations."
5. The council responded on 22 November 2013. It stated that the information was exempt under section 43 of the Freedom of Information Act (FOIA) on the basis that it is commercially sensitive information.
6. Following an internal review the council wrote to the complainant on 9 January 2013, and wrote again revising its view on 5 February 2014. The outcome of the review was however that the council upheld its initial decision that the information was exempt as section 43 applied.
7. The Commissioner then wrote to the council on 21 July 2014. He asked the council to reconsider its position as he considered that, given the nature of the request, the information falling within the scope of the request was likely to be environmental information. The council would therefore need to consider the request and respond to the complainant under the EIR.
8. The council then reconsidered its position and wrote to the Commissioner and the complainant on 5 September 2014 stating that after its reconsideration it had now exempted the information under Regulation 12(5)(c) (intellectual property rights).
9. The Commissioner telephoned the council on 17 September 2014 asking the council to clarify what intellectual property rights existed on the information and stating that in his view Regulation 12(5)(c) was unlikely to be applicable.
10. On 29 September 2014 the council confirmed to the Commissioner that after reconsidering the information it was going to disclose it to the complainant. It did so on the same date.

Scope of the case

11. The complainant contacted the Commissioner on 9 May 2014 to complain about the way his request for information had been handled. Initially his complaint was that the council had not disclosed the information to him.
12. Following the disclosure of the information to the complainant the complaint is that the council did not disclose the information to him when he first requested it.

Reasons for decision

13. Regulation 5 (2) states that "*Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.*"
14. The complainant first requested the information on 8 November 2013. The council disclosed the information to the complainant on 29 September 2014. The disclosure of the information therefore falls outside of the period of 20 working days required by the Regulations.
15. The Commissioner's decision is therefore that the council has failed to comply with Regulation 5(2).

Right of appeal

16. 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

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

17. 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.
18. 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
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Wycliffe House
Water Lane
Wilmslow
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