

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

Decision notice

Date: 23 February 2015

Public Authority: Creech St Michael Parish Council
Address: Little Garth
Charlton Road
Creech Heathfield
Taunton
TA3 5EJ

Decision (including any steps ordered)

1. The complainant requested from Creech St Michael Parish Council ("the council") a copy of a recording made at a meeting when the sale of an area of land known as Merlyn's Copse was discussed. The council initially relied on the exception under regulation 12(5)(e) of the Environmental Information Regulations 2004 ("the EIR") to withhold the information. This exception concerns prejudice to commercial interests. During the Commissioner's investigation, the council clarified that it did not hold the information, which the complainant accepted. The Commissioner's decision is that the council breached section 1(1)(a) and 10(1) of the Freedom of Information Act 2000 ("the FOIA") for failing to state that the information was not held. It also breached regulation 14(2) and 14(3)(a) of the EIR for failing to state that the information was not held. There were additional breaches of regulation 14(2), 14(5)(a) and (b) under the EIR because of the failure to inform the requester of his statutory rights to request an internal review and appeal to the Information Commissioner.

Request and response

2. On 5 June 2014, the complainant requested information from the council in the following terms:

"...I would like a copy of the recordings from the parish meetings when the sale of Merlyn's copse was discussed".
3. The council replied on 27 June 2014 and said that as the woodland is currently subject to a commercial business tender the information is excepted from disclosure under regulation 12(5)(e) of the EIR.
4. The complainant replied on 28 June 2014 and expressed dissatisfaction with the refusal. He did not accept the use of regulation 12(5)(e) and he also said that he would expect to receive the remainder of the information under the FOIA. He pointed out that the public were not excluded from all parts of the meetings and he was not only interested in the information concerning the discussion of Merlyn's copse.
5. The council replied on 7 July 2014 and referred the complainant to its earlier response.
6. There following an exchange of emails between the complainant and the council during which the council continued to refuse to provide the requested information.

Scope of the case

7. The complainant contacted the Commissioner on 1 August 2014 to complain about the way his request for information had been handled. He asked the Commissioner to consider whether the information had been correctly withheld using regulation 12(5)(e) of the EIR.
8. During the Commissioner's investigation, the council explained that it had understood that the complainant's request was limited to a meeting on 12 May 2014. The Commissioner confirmed with the complainant that this was the case. When the council explained that the information was not held because it had not made a recording of that meeting by mistake, the complainant accepted this but he asked the Commissioner to issue a notice addressing the procedural issues that arose from the way in which the request was handled.

Reasons for decision

Section 1(1)(a) and 10(1) of the FOIA

9. Some of the information, if held, would have fallen under the scope of the FOIA.
10. Under section 1(1)(a) of the FOIA, public authorities are generally obliged to state whether or not recorded information is held when requested. The failure to state that the information was not held within 20 working days was a breach of section 10(1). The failure to state that the information was not held until the Commissioner's intervention was a breach of section 1(1)(a).

Regulation 14 of the EIR

11. Some of the information, if held, would have fallen under the scope of the EIR. That is information concerning the sale of Merlyn's Copse and other information contained in the minutes. Any information on activities affecting or likely to affect the elements and factors of the environment is environmental information for the purposes of the EIR. The sale of Merlyn's copse would affect the land.
12. Under regulation 5(1) of the EIR public authorities have a general duty to make environmental information held when it is requested. When the information is not held, public authorities should issue a refusal, in accordance with obligations under regulation 14, that cites the exception under regulation 12(4)(a) of the EIR. This exception applies when information is not held. The failure to state that the information was not held within 20 working days was a breach of regulation 14(2). The failure to do this until the Commissioner's intervention was a breach of regulation 14(3)(a).
13. The council's refusal notice also failed to inform the requester of his right to request a review of the refusal and of his right to complain to the Commissioner. The failure to do this within 20 working days was a further breach of regulation 14(2). The failure to do this subsequently was a breach of regulation 14(5)(a) and (b).

Other Matters

14. The Commissioner would like to highlight that he has published detailed guidance materials on his website at www.ico.org.uk to help public authorities to understand their obligations under the EIR and the FOIA and how to deal with requests for information effectively. He considers that the public authority would benefit from reviewing the Commissioner's guidance at this stage to help it to improve its request handling in the future.
15. The authority should consider the details of complaints procedures relating to request handling described in part VI of the Code of Practice under section 45 of the FOIA. For ease of reference, the Code is here:

<https://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section45-code-of-practice.pdf>

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