

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

### **Decision notice**

**Date:** 13 April 2015

**Public Authority:** Crawley Borough Council  
**Address:** Town Hall  
The Boulevard  
Crawley  
West Sussex  
RH10 1UZ

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

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1. The complainant has requested a copy of a contract between Biffa and Crawley Borough Council (the council). The council did not provide the information as it stated that the contract was still being finalised and a copy would be provided once complete. It later advised that the complete contract was not held.
2. During the Commissioner's investigations the council confirmed that the contract was not complete at the time of the request and that is why it was not provided at the time. A copy of the contract was later provided to the complainant once it had been completed and signed off.
3. The Commissioner's decision is that the council has breached regulation 14(3)(a) of the EIR in that it did not include an exception when refusing to provide the contract.
4. The Commissioner has also found that the council breached regulation 14(5)(a) of the EIR as it did not inform the complainant of his rights to request an internal review.
5. As the complainant has now received a copy of the contract, the Commissioner does not require the council to take any steps. However he has made additional comments about the councils handling of this request in the "Other matters" section at the end of the decision notice which he would expect the council to take note of.

## Request and response

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6. On 17 March 2014, the complainant requested from the council, via the "Whatdotheyknow" website, the following information:

*"Please provide a 'hard copy' to my home address of the complete contract between Crawley Borough Council and Biffa to include all operating procedures and directives for the execution of that contract, number of staff transferring from Veolia to Biffa under 'TUPE' and job titles.*

*Please do not consolidate any of my 'Freedom of Information' requests.*

*I will accept a digital copy of the contract on CD or DVD."*

7. The council responded on the 11 April 2014. It advised that the final form of the contract with Biffa had not yet been completed as some of the various individual documents that make up the agreement are still being finalised. Once complete a copy would be sent to the complainant, subject to any relevant exemptions.
8. On the 16 April 2014, the complainant asked the council to conduct an internal review.
9. The council responded on the 24 April 2014. It now advised that it did not hold the information for the same reasons set out in its first response. It did not state whether this was its internal review.
10. The complainant requested that the council conduct an internal review again on the 20 May 2014.
11. The council responded on 10 June 2014. It has since informed the Commissioner that it considers this to be its internal review response.

## Scope of the case

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12. The complainant contacted the Commissioner on the 18 September 2014 to complain that he was not satisfied with how the request had been handled by the council. In particular, he considered that he had not been provided with an adequate internal review.
13. The Commissioner wrote to the council on the 26 September 2014 asking it to conduct an internal review within 20 working days.

14. The complainant advised the Commissioner on the 24 October 2014 that he had not received an internal review from the council following the Commissioner's contact. He told the Commissioner that he considers there is a contract held by the council.
15. Following further contact by the Commissioner to the council, on the 14 January 2015, the council stated that the various individual documents that made up the contract had now been agreed and anticipated that the contract would be finalised, scanned to CD/DVD and sent to the complainant within 14 days.
16. The complainant advised the Commissioner, on the 3 February 2015, that he was still awaiting the information from the council.
17. Following further contact by the Commissioner to the council, the complainant confirmed on the 14 February 2015, via the "Whatdotheyknow" website that he had received a copy of the contract.
18. With regards to the internal review, the council provided the Commissioner with a copy of its internal review that it states was sent to the complainant on the 10 June 2014. The internal review upheld its original position, but did not rely on any exception or exemption to refuse the request. It appears that the complainant may not have deemed this sufficient for an internal review.
19. Although the complainant has now received the requested information, he has asked the Commissioner to issue a decision notice with regards to the way that the council has handled his request.
20. The Commissioner considers the scope of the case is to determine firstly whether the information requested is environmental information.
21. The Commissioner will then determine if the council has complied with regulation 14 of the EIR - whether or not the council's refusal to provide the requested information was in accordance with the EIR.

## **Reasons for decision**

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

22. Regulation 2(1) of the EIR defines environmental information as, among others, information on:
  - (a) *"The state of the elements of the environment, such as air, water soil, land, landscape and natural sites including wetlands, costal 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 and 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;"*

23. Biffa is a company that is used for collecting residents recycling, refuse and green waste. The council has also confirmed to the Commissioner that it considers this request falls under the EIR.

24. The Commissioner sees that the information falls under the definition of regulation 2(1)(c) of the EIR, as the contract is a measure that affects or is likely to affect the elements and factors referred to in (a) – land, landscape - and (b) - waste - of regulation 2 of the EIR and is also a measure or activity designed to protect those elements.

**Regulation 14(2) of the EIR – Refusal to disclose information.**

25. Regulation 14 of the EIR states that:

*"(1) If a request for environmental information is refused by a public authority under regulation 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.*

*(2) The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.*

26. Following the Commissioner's investigations in this case, the council has told the Commissioner that it:

*"1. ...confirms that it did hold the contract in full format but a number of separate documents that made up the contract were still subject to review and final approval from the contractor.*

*2. We interpreted [complainant's name redacted] request as being for the 'complete contract'. We advised [complainant's name redacted] that the contract was not complete and [complainant's name redacted] did not request any further information at the time.*

*3. Crawley Borough Council responded as it did as it was of the opinion that it did not hold the information at the time of the request, this is, the complete contract..*

*4. We responded to the requestor by advising them that at the time of the request, the contract was not complete but that when it was, we would provide a copy to him."*

27. On considering this explanation from the council the Commissioner notes that in informing the complainant that it was not providing the information at the time of the request, this was essentially a refusal. As it was provided to the complainant within the required 20 working days from receipt of the request, the Commissioner considers that the council complied with regulation 14(2) of the EIR. However the council did not provide any exceptions as to why the request was being refused.

### **Regulation 14(3)(a) of the EIR – citing exception for refusal**

28. Regulation 14(3)(a) of the EIR states:

*"(3) The refusal shall specify the reasons not to disclose the information requested including-*

*(a) any exception relied on under regulation 12(4), 12(5) or 13"*

29. It appears to the Commissioner, from the council's explanations and reviewing the correspondence of this case, that it should have either provided the complainant with the information it did hold at the time of the request or refused the request stating an exception, such as regulation 12(4)(d) of the EIR – Information that relates to material which is still in the course of completion, to unfinished documents or to incomplete data. Or regulation 12(4)(a) – it does not hold that information when the applicant's request is received.
30. Therefore the Commissioner finds that the council breached regulation 14(3)(a) of the EIR as it did not cite any exception in its refusal.
31. As the contract has now been completed and provided to the complainant, the Commissioner does not require the council to take any steps in this case but would expect it to comply with the requirements of regulation 14 for future requests.

### **Regulation 14(5) of the EIR**

32. Regulation 14(5) of the EIR states that:

*"The refusal shall inform the applicant-*

(a) *That he may make representations to the public authority under regulation 11"*

33. Therefore a public authority, in its refusal letter, should advise the complainant of his right to make representations, which is his right to request an internal review.
34. The Commissioner notes and the council also acknowledge that it did not advise the complainant of his right to request an internal review under regulation 11 of the EIR.
35. Therefore the Commissioner finds that the council has breached section 14(5)(a) of the EIR.
36. As the complainant has already requested an internal review and one was provided by the council, the Commissioner does not require the council to take any steps but expects that all future responses, by the council, to EIR requests include this required information.

### **Other matters**

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37. Although the Commissioner does not require the council to take any steps in this case, because the complainant has now been provided with the information and an internal review has been carried out, he would expect that the council take note of the way it has handled this request.
38. The Commissioner sees that with the council not identifying this request as an EIR request initially, confusion and frustration has been caused to the complainant by the council not issuing a correct refusal notice or citing any exceptions for refusal. This in turn has affected the timeliness for the complainant to get a resolution in this case.
39. The Commissioner would expect that the council identifies and responds to future environmental requests in accordance with the EIR and within the permitted timeframes.
40. With regards to this, the council has made the Commissioner aware that its council officers involved with the administration of the FOIA and EIR have recently undertaken an intensive course of study, leading to an examination with an accredited training company. The Commissioner trusts that this will aid the council in responding to future requests in accordance with the FOIA and/or EIR.

## **Right of appeal**

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41. 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)

42. 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.
43. 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**