

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

Decision notice

Date: 7 September 2015

Public Authority: Chorley Borough Council
Address: Civic Offices
Union Street
Chorley
Lancashire
PR7 1AL

Decision (including any steps ordered)

1. The complainant requested various items of information in respect of the costs that the Council estimated it would incur for the provision of a settled Traveller site at Cowling Farm. The Council informed the complainant that the only information it holds could be found on its website and provided links to the information. It also cited section 21 of the FOIA on the basis that the information was available to the complainant by other means. During the Commissioner's investigation, the Council accepted that it should have considered this request under the EIR. It also confirmed that the links provided in its initial response provided access to all information it held falling within the scope of the request at the time it was received.
2. The Commissioner's decision is that Chorley Borough Council incorrectly considered this request under the FOIA. However, as the Council had provided the information it held, albeit under different legislation, he does not require the Council to take any steps.

Request and response

3. On 10 October 2014 the complainant wrote to the Council and requested the following information in respect of the Chorley Local Plan 2012-2026- Gypsy and Traveller and Travelling Show people Preferred Options:

"Can you please confirm the full cost that the Council estimates it will incur for the provision of a settled Traveller site at Cowling Farm as indicated in the GTTA consultation based on the following assumptions

- *Access will be via Moorland Gate*
 - *The site will be for 5 pitches*
 - *As masterplanning has not been completed that the location of the site will be either a) directly behind Cowling Farm or b) adjacent to Moorland Gate business park*
 - *As the site will be delivered prior to any other residential or industrial development please ensure that all costs to be included in the estimate*
 - *Assuming CBC will pay for the development in full without any form of grant or central government funding*
 - *Costs to include all highway and other costs that will be incurred in the development"*
4. The Council responded on 7 November 2014. It refused the request by virtue of section 21 of the FOIA which states that information which is reasonably accessible to applicant, is exempt information. It also confirmed that the only information it held could be found on its website and provided two links for the complainant to access the information.
5. Following an internal review the Council wrote to the complainant on 8 January 2015 confirming that it upheld its original response of 7 November 2014.

Scope of the case

6. The complainant contacted the Commissioner 9 January 2015 to complain about the way his request for information had been handled. He commented that a named Councillor was on record at a meeting in September 2014 as stating that the costs in relation to the Cowling Farm Site were only a proportion of the total cost associated with the provision of the permanent Traveller site as the Council have assumed that during the master planning some costs will be allocated to other developments taking place on the site. The complainant argued that if the costs were only a proportion, then common sense and logic tells you that the total costs must be known, for them to derive the proportion that is being allocated to the permanent Traveller site.

7. The Commissioner has first investigated whether the Council has considered this request under the appropriate legislation.
8. Additionally, as the complainant considers that the Council holds additional relevant information to that already disclosed via the electronic links to its website, the Commissioner has considered whether the Council has complied with its obligations under regulation 5 of the EIR and identified all relevant information it holds falling within the scope of this request.

Reasons for decision

The appropriate legislation

9. The Commissioner notes that the Council considered this request under the FOIA. However, the Commissioner considers that the information is environmental, as defined by regulation 2 of the EIR.
10. Regulation 2(1) of the EIR defines what 'environmental information' . The relevant parts of the definition are found in 2(1)(a) to (c) which state that it is any information in any 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...'

11. The information requested relates to the costs of provision of a settled Traveller site at Cowling Farm which constitutes a 'measure' affecting the land. The Commissioner acknowledges that the request is in respect of financial information, but would refer to his guidance (link provided below) regarding environmental information, which confirms that if the request is in respect of the financial cost of developing land, it is likely

also that it will constitute environmental information. The Commissioner is therefore satisfied that the information is environmental as defined by regulation 2(c) of the EIR.

https://ico.org.uk/media/for-organisations/documents/1641/guide_to_environmental_information_regulations.pdf

Regulation 5 – Duty to make available environmental information on request

12. Under regulation 5(1) of the EIR, in response to a request for information a public authority is only required to provide recorded information it holds and is not therefore required to create new information in order to respond to a request.
13. In his consideration of this case, the Commissioner is mindful of the former Information Tribunal's ruling in EA/2006/0072 (Bromley) that there can seldom be absolute certainty that additional information relevant to the request does not remain undiscovered somewhere within the public authority's records. When considering whether a public authority does hold any additional information therefore, the normal standard of proof to apply is the civil standard of the balance of probabilities.
14. The Commissioner's judgement in such cases is based on the complainant's arguments and the public authority's submissions and where relevant, details of any searches undertaken. The Commissioner expects the public authority to conduct a reasonable and proportionate search in all cases.
15. In this particular case, the complainant considers that the Council must know the total costs if it could state in September 2014 that the costs in relation to the Cowling Farm Site were only a proportion of the total costs associated with the provision of the permanent Traveller site. The Commissioner has considered the information relevant to the request provided via the links.
16. He notes that the first link provides an estimated cost of development of nine different sites including the one at Cowling Farm and is based on a number of assumptions. It also contains an explanatory note confirming that the figures are gross of any grant assistance the Council may receive from the government. It also points out that the financial aspects of the development are not the over-riding consideration in the final choice of location.
17. The information accessed via the second link is the Chorley Local Plan 2012 -2026, September 2014, a 70 page document with Appendix 5

detailing the estimated costs of each site in the Preferred Option report. It provides details of what is included in the figure such as VAT. However, it also confirms that some costs have not been included because they are yet to be determined at this stage in the development of the site.

18. There is no evidence to suggest that the complainant was not able to access the above information via the links provided.
19. The Commissioner has considered the view that if the Council can state the Cowling Farm costs are only a 'proportion' of the total costs, it must therefore know what the total costs were. The Commissioner believes that it is entirely reasonable for the Council to estimate costs at any particular stage of a development, but to be aware that there are likely to be additional costs, as yet unknown. He notes that at the time of the request, the development was still on-going, therefore he does not anticipate that the Council would know the total costs at this time.
20. Additionally, the Commissioner asked the Council to provide details and evidence of its search. The Council subsequently contacted its Head of Governance and Property Services, the Property Team Manager, the Policy and Design Team Leader and the Principal Financial Accountant. All confirmed that they either did not hold anything or that they did not hold any additional information at the time of the request beyond the links already provided. There was however reference to the Chief Finance Officer, (CFO) and the possibility that he might hold something.
21. The Commissioner therefore asked whether the CFO had been contacted and if not, for it to do so. The Council subsequently provided evidence from the CFO in which he confirmed that there was no further financial information other than the links originally provided.
22. The Commissioner has considered the arguments from the complainant and the details and evidence of the search conducted in respect of this information. He would point out that the focus of his investigation is whether additional information was held at the time of his request. Whilst it appears that the Council may now subsequently hold additional relevant information, he is satisfied that based on the balance of probabilities, that it did not hold additional relevant information at the time of the request. He has therefore concluded that the Council has complied with its obligations under regulation 5 of the FOIA.

Right of appeal

23. 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

24. 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.
25. 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
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Water Lane
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