

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

### **Decision notice**

**Date:** 26 April 2018

**Public Authority:** East Staffordshire Borough Council

**Address:** The Maltsters  
Wetmore Road  
Burton upon Trent  
DE14 1LS

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

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1. The complainant has requested information about the provision of dog parks from East Staffordshire Borough Council ("the Council"). The Council disclosed information in response. The complainant contests that further information is held.
2. The Commissioner's decision is that on the balance of probabilities, the Council has disclosed all information. However, the Council breached regulation 5(2) by providing this information outside the time for compliance, and regulation 14 by failing to issue a refusal notice for information which has been redacted.
3. The Commissioner does not require the public authority to take any steps.

## Request and response

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4. On 19 January 2017, the complainant wrote to the Council and requested information in the following terms:

*Please supply all information from all formats, (including, but not limited to, emails, site visit notes, photographs, committee briefings and reports, internal or external consultations, meeting notes, telephone call notes) in relation to all "dog parks" or other designated and enclosed areas for the exercise of dogs off-lead provided by the Council in the last 3 years, and any planned for the future, including design, provision, construction and maintenance plans and costs, strategic and specific management plans and policy, signage, risk assessment, advice to insurers, and any regard to, or research of, provision of dog parks elsewhere.*

*Please also supply all information from all formats, (including, but not limited to emails, site visit notes, photographs, committee briefings and reports, internal or external consultations, meeting notes, telephone call notes) in relation to the Council's assessment of the impact of any Public Spaces Protection Orders for the control of dogs on nature conservation, protected species and habitats, including, but not limited to, the Council's powers and duties in relation to the Birds and Habitats Directives and the biodiversity duty under the Natural Environment and Rural Communities Act 2006.*

*The information is preferred in electronic format by email, but if hard copy is the only option please send the latter to the address below.*

5. The Council responded on 31 January 2017. It confirmed that no information was held.
6. On 1 February 2017, the complainant asked the Council to undertake an internal review on the basis that information was held.
7. The Council wrote to the complainant on 9 March 2017. It stated that it had reconsidered the request, and now sought to refuse to comply with it under section 14(1) of the Freedom of Information Act 2000 ("the FOIA").
8. The complainant subsequently submitted a complaint to the Commissioner. In addressing this complaint, the Commissioner invited the Council to reconsider its position.
9. The Council issued a new response to the request on 11 December 2017. It confirmed that information was held, and disclosed this to the complainant.

10. Following a query from the complainant, the Council disclosed further information on 27 February 2018, but on the basis that it fell outside the scope of the request.

## **Scope of the case**

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11. The complainant contacted the Commissioner on 22 March 2018 to confirm that he did not consider the Council's disclosure to be complete.
12. The complainant has also queried the validity of the Council's original response, and subsequent application of section 14(1) of the FOIA. The Commissioner's decision here is limited to the Council's final position, which must be taken as having superseded those before. However, the Commissioner will consider the Council's previous positions in 'Other matters'.
13. The Commissioner is aware that the personal data of third parties has been redacted from the disclosed information under the exception provided by regulation 13 of the EIR. It is understood that this aspect has not been contested. However, the Commissioner notes that no refusal notice has been issued under regulation 14.
14. The Commissioner therefore considers the scope of the case to be the determination of whether the Council has complied with regulations 5(1), 5(2), and 14.

## **Reasons for decision**

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### **Is the information environmental?**

15. Information is "environmental" if it meets the definition set out in regulation 2 of the EIR. Environmental information must be considered for disclosure under the terms of the EIR. Under regulation 2(1)(c), any measures that will affect, or be likely to affect, the elements referred to in 2(1)(a), will be environmental information. The requested information relates to the provision of dog parks. The Commissioner therefore considers that the request should be dealt with under the terms of the EIR.

### **Regulation 5(1) – Duty to make information available on request**

16. Regulation 5(1) states that any person making a request for information is entitled to have that information communicated to them. This is subject to any exceptions that may apply.

17. Where there is a dispute between the information located by a public authority, and the information a complainant believes should be held, the Commissioner follows the lead of a number of First-tier Tribunal (Information Rights) decisions in applying the civil standard of the balance of probabilities.
18. In the circumstances of this case the Commissioner will determine whether, on the balance of probabilities, the Council has complied with the request by disclosing all relevant held information.

#### The complainant's position

19. The Commissioner understands that the complainant believes further information is likely to be held, and specifically in relation to risk assessments, impact assessments, and the planning and construction of the dog park.
20. The complainant also disputes that the information disclosed by the Council on 27 February 2018 would fall within the scope of the request.

#### The Council's position

21. The Commissioner has asked the Council to confirm what steps it has taken to retrieve all information that would fall within the scope of the request.
22. The Council has informed the Commissioner that it interprets the request as seeking all records held by the Council relating to two subjects, namely 'dog parks' and 'Public Space Protection Orders' ("PSPOs").
23. In respect of dog parks within the borough, the Council has confirmed that only one of these has been implemented; and that all records about this are known to be retained by the responsible team (the 'Neighbourhood Working Team') in electronic form. The Council's solicitor has manually reviewed the entirety of that team's records in order to collate the requested information.
24. In respect of PSPOs, the Council has confirmed that all records about this subject are held by the Community and Civil Enforcement Team leader, and the Council's solicitor. These records are held in electronic form. The Council's solicitor has manually reviewed these records in order to collate the requested information. The Council's solicitor has also confirmed that they were directly involved in the PSPO project run by the Council, and are therefore familiar with the extent of records held by the Council.

25. The Council has confirmed that no relevant information is known to have been previously destroyed. Whilst the complainant has assumed that specific records must exist and be held by the Council, the Council has stated that these records were not created. In respect of the planning and construction of the dog park, the Council has clarified that the land is owned by the Council, and that exemptions within planning law mean that planning consent has not been necessary for the relevant work undertaken.
26. The Council has also stated that, on review, the information provided on 27 February 2017 is not considered to fall within the scope of the request, as it represents correspondence (between the Council and The Kennel Club) that post-dated the consultation leading to the implementation of the PSPO.

#### The Commissioner's conclusion

27. The Commissioner has considered the searches undertaken by the Council in respect of this request.
28. The Commissioner understands that the request relates to two specific subject matters. Responsibility for these subject matters has been held by specific teams and individuals, who have retained all records electronically in central locations. In response to the request, those records have been manually reviewed by a senior officer with familiarity of the subject matters. The Commissioner understands that a significant volume of records have been disclosed, including correspondence and internal Council documents.
29. The evidence available to the Commissioner suggests that appropriate steps have been taken by the Council to search for relevant information. Whilst it is recognised that the complainant believes further specific records should be held as a matter of course, the Council has confirmed that such records were not created. It is relevant to note that the EIR relate only to the provision of recorded information, and do not impose any requirements about what records should be created by a public authority as part of its activities.
30. Whilst both parties appear to dispute whether correspondence with The Kennel Club would fall within the scope of the request, it is understood that this information has since been disclosed into the public domain. It is therefore reasonable for the Commissioner to conclude that any determination of this aspect has been rendered unnecessary.
31. For the above reasons, the Commissioner has concluded that all relevant held information is likely to have been disclosed.

#### **Regulation 5(2) – Time for compliance**

32. Regulation 5(2) states that information should be made available no later than twenty working days after the date of receipt of the request.
33. In this case the Council revised its position during the course of the Commissioner's investigation, and subsequently disclosed held information outside of twenty working days. On this basis the Commissioner finds a breach of regulation 5(2).

#### **Regulation 14 – Refusal to disclose information**

34. Regulation 14 requires that where a public authority refuses to disclose information under an exception, this is stated in writing.
35. In this case, the Council disclosed held information outside of twenty working days, and redacted the personal data of third parties under regulation 13. However, the application of this exception was not stated in writing. On this basis the Commissioner finds a breach of regulation 14.

#### **Other matters**

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36. The Commissioner reminds the Council of the importance of determining the correct legislation under which to consider a request. The determination of the correct legislation will inform a public authority about the specific steps that it is required to take.
37. The Commissioner further reminds the Council of the importance of giving due consideration to a request before issuing a response. In the circumstances of this case, the Council initially denied any information was held, before then seeking to refuse the request as vexatious under section 14(1) of the FOIA, and subsequently disclosing held information during the Commissioner's investigation. This has resulted in a substantial delay in the request being correctly complied with, and the procedural breaches found in this decision.
38. The Commissioner has issued guidance for public authorities about their obligations under the EIR. This guidance can be accessed at:  
<https://ico.org.uk/for-organisations/guide-to-the-environmental-information-regulations/>

## Right of appeal

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39. 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)

40. 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.
41. 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**  
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**SK9 5AF**