

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

**Decision notice**

**Date:** 13 March 2018

**Public Authority:** Norwich City Council  
**Address:** foi@norwich.gov.uk

**Decision (including any steps ordered)**

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1. The complainant has requested Norwich City Council (the council) to disclose the legal distance between water supply and foul water pipes and graves. The council responded advising the complainant that it does not hold this information.
2. The Commissioner's decision is that on the balance of probabilities the council did not hold the requested information at the time of the request. Regulation 12(4)(a) of the EIR therefore applies in this case.
3. The Commissioner does not require any further action to be taken.

**Request and response**

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4. On 10 November 2016, the complainant wrote to the council and requested information in the following terms:  
  
"Can you let me know under The Freedom of Information Act 2000: what the distance should be, between foul and clean water pipes or ducts and a grave or graves?"
5. There was various exchanges of correspondence between the complainant and the council but the first response it issued confirming that the requested information is not held was on 19 January 2017.

6. Correspondence continued between the complainant and the council about this matter, much of which raised the complainant's dissatisfaction with the council's response to his request and connected complaint.
7. The Commissioner notes that a further response under the legislation was issued to the complainant on 16 February 2017. The Commissioner considers this constitutes the council's internal review response.

### **Scope of the case**

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8. The complainant has been in contact with the Commissioner periodically for some months about this matter and other complaints he has raised against other public authorities. This particular complaint was accepted for formal investigation on 30 November 2017.
9. The Commissioner understands that the complainant remains dissatisfied with the council's response to his request because he believes the council should hold this information or be in a position to provide it.
10. The Commissioner considers the EIR applies to this request rather than the FOIA. The request is about the distance between water pipes and foul pipes and graves. This is information on a policy or indeed legislation (regulation 2(1)(c) of the EIR) which will affect the elements of the environment outlined in regulation 2(1)(a) of the EIR such as the soil and water.
11. The council has argued that it does not hold the requested information. Therefore the appropriate exception to cite is regulation 12(4)(a) of the EIR.
12. The Commissioner considers the scope of this case is to determine whether on the balance of probabilities the council held the requested information at the time of the request and, therefore, whether it is entitled to rely on regulation 12(4)(a) of the EIR.

## Reasons for decision

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13. Regulation 12(4)(a) of the EIR states that a public authority may refuse to disclose information to the extent that it does not hold that information when an applicant's request is received.
14. The council confirmed that it has been in contact with the complainant since March 2016 about Earlham Cemetery. It has addressed the complainant's correspondence and complaints and confirmed that it does not hold the requested information.
15. It explained to the Commissioner that information relating to the cemetery is held within the council's electronic shared folder area. Members of staff within the Citywide Services team were contacted about the request and asked to provide the council's response. The current Environmental Services Officer and the Head of Citywide Services have checked all records and are satisfied that the requested information is not held.
16. It confirmed that it has no business need to hold such information. If it needs any information on water supplies within the cemetery it would check with Anglian Water direct.
17. The council stated that it owns the cemetery and it is responsible for the cost of maintenance of the clean water main (any work would be carried out by Anglian Water). It is also responsible for general maintenance of the cemetery as well as ensuring the health and safety requirements are met in relation to railings, roads, memorial safety and so on. It does not however hold the requested information. It has no record of ever doing so prior to the complainant's first complaint to the council in March 2016 and has no business need to hold it.
18. The Commissioner is satisfied in this case that the council has carried out adequate searches of its records to see whether it held the requested information at the time of the request. It did not. It has explained what its responsibilities are, who within the council has been consulted about the request and that it has no business need to hold such information. The Commissioner is therefore satisfied that regulation 12(4)(a) of the EIR applies to this request.
19. The council has no duty to obtain the requested information from another organisation or public body in order to comply with a request for information. Under the EIR the applicant is only entitled to know whether the public authority holds the requested information and, if it does, to have that information communicated to them subject to any exceptions that may apply. In this case the council has confirmed that it

did not hold the requested information at the time of the request. It has therefore met its obligations under the EIR for this case.

20. The council has stated that it received a letter from the complainant on 28 January 2017 which enclosed some press cuttings and the requested information, which the complainant had obtained from Anglian Water. So, as a result of the complainant himself, it does now hold the requested information. However, at the time of the request it did not and therefore it remains the case that the council is entitled to rely on regulation 12(4)(a) of the EIR for this request.
21. Although regulation 12(4)(a) of the EIR is subject to the public interest test, the Commissioner considers it is not appropriate to carry one out in cases where it is clear the public authority does not hold the requested information.

## Right of appeal

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22. 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)

23. 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.
24. 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

**Samantha Coward**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**