

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 10 January 2019

Public Authority: City of Wolverhampton Council

Address: Civic Centre
St Peter's Square
Wolverhampton
WV1 1SH

Decision (including any steps ordered)

1. The complainant has requested information with regards to the maintenance of a particular tree. City of Wolverhampton Council (the council) stated that no information was held and refused the request under regulation 12(4)(a) of the EIR – information not held. The complainant is of the view that the council does hold records which would show that it has carried out maintenance on this tree.
2. The Commissioner's decision is that the council does not hold the requested information and therefore upholds the council's application of regulation 12(4)(a) of the EIR.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 19 January 2018 the complainant made the following information request to the council:

"Would you please let me have a copy of records you hold which show pruning/ maintenance you have carried out on the above tree. If you claim that you have not previously pruned the tree would you please let me have written confirmation of this."

5. The complainant contacted the council on the 19 February 2018 as he had not received a response to his request. He contacted the council again on the 27 April 2018 as he still had not received a response.
6. The council acknowledged receipt of the request on the 30 April 2018 and responded on the 24 May 2018 stating that it does not hold the requested information, citing regulation 12(4)(a) of the EIR to refuse the request – information not held.
7. The council provided its internal review response on the 25 July 2018. It upheld its original response that the requested maintenance records for the tree is not held.

Scope of the case

8. The complainant contacted the Commissioner 6 July 2018 questioning the council's response that there are no tree maintenance records held for the tree in question.
9. The Commissioner considers the scope of the case is to determine whether the council holds any maintenance records with regards to the tree that his request relates.

Reasons for decision

Regulation 12(4)(a) of the EIR – Information not held.

10. Regulation 5(1) of the EIR requires a public authority, who holds environmental information, to make it available on request.
11. Regulation 12(4)(a) of the EIR allows a public authority to refuse to provide the requested information if it does not hold it at the time of the request being received.
12. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).
13. In this case, the complainant states that both he and his neighbour recall council contractors pruning the tree, to which the request relates, on several occasions. The council, however, states it has no records of

this occurring and that the complainant is responsible for the tree as it is situated on private land, not council land.

14. In response to the Commissioner's enquiries, the council has advised that it liaised with two departments in order to determine whether the requested information was held. The first was its Environmental Services – Direct Works/ Arboriculture which is responsible for tree maintenance and the second was 'Planning' (the section in which the council's Tree Officer is employed).
15. The council has told the Commissioner that the manager of the Environmental Service Department and the Tree Officer searched the relevant recorded information it holds with regards to maintenance records which its states is held manually and has not located any information falling within the scope of the request.
16. The Commissioner considers it relevant to point out that the complainant made a second information request, within his internal review request of 18 June 2018. Part of this second request asked for the following at A):

"Could you also provide copies of the following two documents,

*A) Tree maintenance record for [street name redacted]
Wolverhampton as far back as your records exist...*
17. For this second request, the complainant has told the Commissioner that he asked for the tree maintenance records for the whole street as far back as the council's records exist, but he only received one record, dated 5 April 2016 and this record did not reference the specific tree that the first request was concerned with.
18. The Commissioner is not investigating this second request, as no internal review has been requested or carried out – which is a requirement under regulation 11 of the EIR.
19. However, the complainant raised the point that if the council searched its previous tree maintenance records for the street, then one of these older records may have recorded the specific tree that his initial request is about.
20. If one or more of these records does reference the tree in his initial request, then that/those maintenance record/s should have been provided as part of his original request of the 19 January 2018.
21. The Commissioner considers this to be a legitimate point and has asked the council whether it has searched its previous tree maintenance records for the street to see if any mention the tree in question.

22. In response to this, the council has advised the Commissioner that it only holds the 2016/17 tree maintenance record, the one provided, as its retention period for such documents is 6 years.
23. The council has explained to the Commissioner that the trees on the street in question are in a 4 year Tree Inspection/ Maintenance Programme. They were last inspected/ maintained in 2016/17, the next one will be in 2020/21 and the previous one was in 2012/13; which had already been disposed of prior to the request being made.
24. The Commissioner pointed out to the council that the 2012/13 maintenance record, going by the 6 year retention period, would take it up to a destruction time of 2018/19.
25. As the complainant's request was made in January 2018, the Commissioner has asked the council how the 2012/13 maintenance record could have been destroyed prior to the request, as this would have been held less than the 6 year retention period.
26. The council has told the Commissioner that it does not hold a date that this 2012/13 tree maintenance record was destroyed. It has told the Commissioner that although it does not hold a record of this tree maintenance record being destroyed, it considers that it is very probable that it would have been destroyed when the 2016/17 tree maintenance record was created.
27. The council accepts that this 2012/13 tree maintenance record should have been held until 2018/19 as per its retention schedule, and will feed this back to the relevant departments for future scenarios, but because it would not have been considered a sensitive or significantly important document, destroying it when the 2016/17 maintenance record was created may have appeared to have been a logical step to take, at that time.
28. The council has confirmed that the 2012/13 tree maintenance record is not in the location it would have been kept, only the 2016/17 one is there. It has also advised that it would only keep manual records of this type of information.
29. The council has also told the Commissioner there is no other type of information held that would record maintenance of this tree or other trees carried out by the council.
30. Whilst this, unrecorded, destruction of the 2012/13 tree maintenance record took place before the 6 year retention period was up, the Commissioner accepts the council's explanation to be plausible that it was most likely destroyed when the 2016/17 record was created.

31. The council has also reiterated to the Commissioner that it would never have held a maintenance record for the tree to which the request relates, as this tree is on private land and so not the responsibility of the council.
32. The Commissioner has considered the above and is sympathetic to the complainant in the fact that he and his neighbour have a recollection of the tree being pruned in the past. However, the council disagree that it would have requested any maintenance to have been carried out on the tree and argues that this is because it is on private land, not council land.
33. Whether or not this tree was pruned inadvertently by the council the Commissioner is unable to determine, it is also outside of her remit to determine who has responsibility for the tree. The Commissioner can only consider, in this case, whether recorded information is held by the council with regards to whether maintenance has been carried out on the tree.
34. The fact that the council has searched its records and that previous maintenance records no longer exist due to the council's retention policy (along with its explanation as to why the 2012/13 record no longer exists), the Commissioner can only find, on the balance of probabilities, that the council does not hold the requested information and therefore the council refusal under regulation 12(4)(a) of the EIR is engaged.

Right of appeal

35. 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

36. 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.
37. 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
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