

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 7 October 2020

Public Authority: Wiltshire County Council
Address: County Hall,
Bythesea Rd,
Trowbridge BA14 8JN

Decision (including any steps ordered)

1. The complainant has requested information about s106 contributions in respect of the development of a new Aldi Store in Malmesbury. Wiltshire County Council disclosed some information and withheld other information under the exceptions for the confidentiality of proceedings (regulation 12(5)(d)) and commercial confidentiality (regulation 12(5)(e)). During the course of the Commissioner's investigation the public authority dropped its reliance on exceptions and disclosed the previously withheld information to the complainant.
2. The Commissioner's decision is that Wiltshire County Council failed to disclose the requested information within the statutory time limit and breached regulation 5(2) of the EIR.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 18 November 2019, the complainant wrote to Wiltshire County Council (the "council") and requested the following information:

"Please accept the following as a Freedom of Information request concerning Wiltshire Council Planning Department and Wiltshire Councillors consideration and determination of s106 contributions in respect of the development of a new Aldi Store in Malmesbury – Application 18/06980/FUL

1. Can you please supply the report and other documents and information prepared by Wiltshire Planning Department for the Chair of the Committee and the Director for Growth, Investment and Places to make their consideration and determination in July 2019 that the financial contribution requested on the basis of Malmesbury Town Team submissions does not accord with the provisions of the CIL regulations and is not justified as a requirement that should be placed upon the applicant.

2. Can you please supply the date, time and minutes of the meeting where this decision was taken, including a full list of attendees.

3. Can you please supply all correspondence and notes of all meetings or telephone discussions between councillors and officers on the determination of s106 contributions as a financial contribution for Malmesbury town centre in respect of this planning decision, including but not limited to [redacted], both before and after the planning hearing in connection with Application 18/06980/FUL and before and after the meeting where the decision on this matter was taken by the Chair of the Committee and the Director for Growth, Investment and Places.

4. Can you please supply all correspondence and notes of all meetings or telephone conversations between Wiltshire Council officers and between Wiltshire Council officers and Wiltshire Councillors, if any, in consideration and refusal of the requests by Malmesbury Town Team to be sent a copy of the report and information prepared by Wiltshire Planning Department for the Chair of the Committee and the Director for Growth, Investment and Places and the minutes of this meeting in July and September 2019.

5. Can you please supply all correspondence and notes of all meetings or telephone discussions between Wiltshire Council and its officers and councillors and Aldi and its staff or representatives in connection with the consideration of the submissions made by Malmesbury Town Team in respect of s106 contributions for this application.

6. Can you please supply copies of any legal advice, including written notes if the advice was verbal, Wiltshire Council or its officers have received on this matter."

5. The council responded on 12 December 2019, disclosing some information, confirming that other information was not held and withholding some information under the exceptions for internal communications (regulation 12(4)(e)) and material in the course of completion (regulation 12((d)).
6. The complainant requested an internal review on 6 January 2020. The council sent the outcome of its internal review on 31 January 2020. This response partly revised the council's position as set out below.
7. In relation to part 1 of the request the council stated that it had directed the complainant to the wrong report and confirmed that the correct report was being withheld under the exception for confidentiality of proceedings (regulation 12(5)(d)). In relation to part 2, the council confirmed that it agreed with its original decision that there was no record of the meeting in question. It also confirmed that the final decision regarding financial contributions had not been reached and that no information was held. It also stated that it did not hold the information in part 6 of the request.
8. In relation to part 3 of the request, the council withdrew its reliance on regulation 12(4)(d) and confirmed that it was now relying on the exception in regulation 12(4)(e) to withhold the information. In relation to part 4, the council maintained its reliance on regulation 12(4)(e) to withhold the information. In relation to part 5, the council overturned its original position that information was not held and confirmed that it was relying on the exception in regulation 12(5)(d) to withhold the information. It also applied the exception for commercial confidentiality – regulation 12(5)(e) to withhold the same information.

Scope of the case

9. On 29 February 2020 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
10. The complainant confirmed to the Commissioner that they wished her to investigate whether the council had correctly withheld the information in parts 1, 3, 4 and 5 of the request and whether it had correctly confirmed that it did not hold the information in parts 2 and 6 of the request. The complainant stated that their preference was for an informal resolution

to their complaint, providing that satisfactory disclosures were made by the council.

11. During the course of the Commissioner's investigation the council revised its position and disclosed the information in parts 1, 3, 4 and 5 of the request to the complainant. The council also reaffirmed that it did not hold the information in parts 2 and 6 of the request.
12. In light of the disclosure of the previously withheld information and the complainant's previously stated preference, the Commissioner invited the complainant to withdraw their complaint.
13. The complainant confirmed that they wanted the Commissioner to conduct an analysis of the council's original grounds for withholding the (now disclosed) information and to set out her conclusions in a decision notice. The complainant did not dispute the council's confirmation that information in relation to parts 2 and 6 of their request was not held so the Commissioner has excluded this from her analysis below.
14. The Commissioner advised the complainant that, in cases where previously withheld information is disclosed during her investigation, she does not make an adjudication as to whether a public authority's original grounds for refusal were correct.
15. The Commissioner explained to the complainant that, as a responsible and proportionate regulator the Commissioner focuses her activities on cases where access to information is still in dispute. In this case, she directed, the complainant was now in receipt of the information originally requested and any findings the Commissioner might make in relation to the original grounds for refusal would not result in there being any steps for the council to take. The Commissioner confirmed that this was her established policy and directed the complainant to a recent decision of the First-Tier (Information Rights) Tribunal which provided further context and rationale for this approach¹.
16. The complainant confirmed that they still wished the Commissioner to reach a decision along the lines they had identified. The Commissioner sees no reason in this case to depart from her policy and has constrained the scope of this decision notice to a consideration of the council's compliance with regulation 5(2) of the EIR.

¹ See: EA/2020/0160.

Reasons for decision

Regulation 5 – duty to provide environmental information

17. Regulation 5(1) of the EIR states:

"Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request."

18. Regulation 5(2) states:

"Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request."

19. In this case the complainant submitted their request to the council on 18 November 2019. During the Commissioner's investigation, on 18 September 2020, the council disclosed information which had previously been withheld to the complainant.

20. The Commissioner has concluded that that the council disclosed the requested information outside the statutory time limit and breached regulation 5(2) of the EIR.

Right of appeal

21. 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@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

22. 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.
23. 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
Interim Head of FOI Casework and Appeals
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF