

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

### **Decision notice**

**Date:** 7 January 2020

**Public Authority:** South Cambridge District Council  
**Address:** South Cambridge Hall  
Cambourne Business Park  
Cambourne  
Cambridge  
CB23 6EA

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

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1. The complainants requested various information from South Cambridge District Council in relation to planning permissions considered, granted and refused, tree preservations orders and environmental assessments.
2. South Cambridge District Council disclosed the requested information, with some minor redactions for personal data with which the complainants did not take issue.
3. By responding late, the Commissioner's decision is that South Cambridge District Council has breached Regulations 5(2) and 11(2) of the EIR.
4. The Commissioner does not require South Cambridge District Council to take any steps to ensure compliance with the legislation.

#### **Request and response**

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5. On 27 November 2018, solicitors acting on behalf of the complainants, wrote to South Cambridge District Council (the Council) and requested information in the following terms:

*"1. We write on behalf of our Clients in relation to a joint request under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 ("the Joint Request" or "the Request"). Please find enclosed a letter of authority confirming our entitlement to make the below request on their behalf.*

*2. The Joint Request is made pursuant to s.1 of the Freedom of Information Act 2000 and r.5 of the Environmental Information Regulations 2004. The Joint Request is made in this form so that South Cambridgeshire District Council ("the Council") can determine which parts of the Request it considers falls within each statutory disclosure regime, and apply the relevant provisions to the request.*

*3. For the avoidance of doubt, our Clients submit that all of the information sought is covered by one or both of the statutory regimes. In so far as any information sought is covered by both regimes, we submit that the Council should process that information*

*4. The information that our Clients seek disclosure of pursuant to the Joint Request is:*

*a. Information regarding planning permissions considered, granted and refused, including the environmental considerations in relation to the same, for each of the following:*

*i. Church Fann, High Street, Boxworth, Cambridge, CB23 4LZ (and any subdivision of that property) which includes planning permission S/2548/16/LB and S3444/18FL; and*

*ii. The Old School House, High Street, Boxworth, Cambridge, CB23 4LZ which includes planning permission S/2231/12NC, S/2224/13NC and S/2484/15/FL;*

*iii. The Keysmith, High Street, Boxworth, Cambridge, CB23 4LY.*

*b. Information regarding the consideration given to any request made by our Clients ( either jointly or individually) for a Tree Protection Order under Part 8 of the Town and Country Planning Act 1990 (as amended) in the last 6 years including but not limited to:*

*i. The dates on which any such requests were received, decided upon and the decision(s) communicated to our Clients;*

*ii. The names and job titles of all those involved in considering those applications; and*

*iii. The rationale and material relied upon in relation to each request.*

*c. Information regarding any enforcement action taken by the Council, to include fact-finding visits, environmental or other assessments and correspondence with relevant persons, in relation to any of the following:*

- i. Trees/other vegetation which has been planted on the boundary of The Old School House and Lavender Cottage by those occupying The Old School House;*
  - ii. The erecting of a badger fence along the perimeter of Church Fann;*
  - iii. The felling of trees and other disturbances to the natural habitat caused by the development(s) at Church Farm; and*
  - iv. Any other environmental issues that engage the Council's duties which have occurred in the last 6 years or are occurring along the boundary of Lavender Cottage, High Street, Boxworth, Cambridge, CB23 4LY.*
- 5. In so far as the Council considers that part of the information sought in the Joint Request is disclosable only under the Environmental Information Regulations 2004, please provide a break-down of the anticipated costs of producing the information in advance of doing so. We are authorised to receive the information electronically and specifically request that it is provided in this format in so far as it assists in reducing costs.*
- 6. Please provide the information requested as soon as possible, and, in any event, within the 20-working day period specified by s.10(1) of the Freedom of Information Act 2000 and r.5(2) of the Environmental Information Regulations 2004.*
- 7. We understand that from December 2018 the Council will revert to a policy of publishing FOI and EIR requests on a digital portal. We further understand that the requests will be anonymised, both in terms of the identity of the requesting party and to prevent the identification of individuals by the contents of the request. For the avoidance of doubt, we consider this letter and its contents to be confidential and request that you do not publish it (whether in redacted form or otherwise) without giving us the opportunity to make representations in advance of any such publication.*
6. The Council responded on 4 February 2019. It disclosed some information with redactions under Sections 31(1) and 40(2) of the FOIA and Regulation 13 of the EIR. It also advised that it would disclose further documents shortly afterwards.
  7. On 29 April 2019 the complainants' solicitors requested an internal review and pointed out that the further information had not been disclosed despite a reminder being sent on 26 February 2019. In the absence of a response, they sent a number of reminders.
  8. Following an internal review, the Council wrote to the complainant on 11 July 2019. It apologised for the delay and disclosed further information.

## Scope of the case

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9. Solicitors acting on behalf of the complainants contacted the Commissioner on 1 April 2019, 31 May 2019 and 28 June 2019 to complain about the way their clients' request for information had been handled.
10. Specifically the solicitors stated that the Council's responses had been late and incomplete, and that an internal review remained outstanding.
11. The Commissioner contacted the Council on 28 June 2019 and invited it to respond to the complainants' internal review request dated 29 April 2019.
12. The Council provided an internal review on 11 July 2019.
13. In response to a letter from the Commissioner dated 16 August 2019, inviting the Council to review its handling of the request, it disclosed further information to the complainant on 29 August 2019.
14. On 18 October 2019 the Commissioner wrote to the Council and requested a schedule of all the recorded information held falling within the scope of the complainants' request together with details of that which had been disclosed, redacted or withheld with reference to the FOIA exemptions / EIR exceptions applied. She also asked the Council for details of all the searches and enquiries it had carried out to identify and locate this information.
15. The Council responded on 24 October 2019 and 7 November 2019 with a schedule of the requested information, together with details of the searches and enquiries it had carried out. With regard to the redactions, the Council pointed out that these were minimal and had been applied in respect of personal data covered by Section 40(2) of the FOIA and Regulation 13 of the EIR. Having reviewed all of the redactions, the Council said some had been made without being clearly explicable and added that they did not match what was on the planning portal. Accordingly, it reapplied the appropriate redactions and sent updated copies of the relevant pages to the complainants.
16. The Commissioner shared the Council's responses with the complainants on 25 and 27 November 2019 and suggested that, if they were satisfied with the information disclosed and the minor redactions for personal data, she could issue a Decision Notice dealing with the timeliness of the Council's responses.
17. The Commissioner wrote to the complainants again on 4 December 2019. She acknowledged that the complainants were satisfied all

recorded information held had been disclosed and accepted the minor redactions made. The Commissioner therefore stated she would draft a Decision Notice dealing with the timeliness of the Council's responses only.

18. The scope of the Commissioner's investigation is therefore limited to the Council's compliance with Regulations 5(2) and 11(2) of the EIR.

## **Reasons for decision**

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### ***Relevant legislative regime***

19. The Council cited provisions from both the FOIA and the EIR when responding to the request. Therefore, the first question for the Commissioner to address is whether the complainants' request is covered by the EIR or the FOIA.

### *Environmental information*

20. Information is 'environmental information', and must be considered for disclosure under the terms of the EIR rather than the FOIA, if it meets the definition set out in Regulations 2(1)(a) to 2(1)(f) of the EIR.
21. The Commissioner considers that the information in this case can be classed as environmental information, as defined in Regulation 2(1)(c) of the EIR. This says that any information on measures such as policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect the elements or factors of the environment listed in Regulation 2(1)(a) and 2(1)(b) will be environmental information. One of the elements listed under 2(1)(a) is land.
22. The request is for information relating to planning permissions considered, granted and refused, tree preservation orders and environmental assessments. The Commissioner therefore considers the request relates to a measure as defined in Regulation 2(1)(c) of the EIR which will, or would be likely to, affect the elements described in 2(1)(a), namely, land and landscape.
23. The Commissioner is satisfied that the request was for environmental information, and that the request fell to be dealt with under the EIR.

### *Regulation 5(2) of the EIR - Duty to make available environmental information on request*

24. Regulation 5(2) of the EIR provides that environmental information shall be made available under Regulation 5(1) as soon as possible and no later than 20 working days after the date of receipt of a request.

25. The complainants submitted their request for information on 27 November 2018 and the Council responded, disclosing some information, on 4 February 2019.
26. By failing to disclose to the complainants all the information it held which fell within the scope of their request, within the 20 working day time for compliance, the Council breached Regulation 5(2) of the EIR.

*Regulation 11(2) of the EIR - Representations and reconsiderations*

27. Regulation 11 of the EIR provides that, if a requester is dissatisfied with a public authority's response to a request, the requester can ask for a review. Regulation 11(4) provides that a public authority should respond promptly and no later than 40 working days after the date of receipt of the request for review.
28. The complainant requested an internal review on 29 April 2019 and the Council provided the outcome 51 working days later, on 11 July 2019, after the Commissioner intervened. The Commissioner considers that by failing to provide the outcome of the internal review within 40 working days, the Council breached regulation 11(4) of the EIR.
29. The Commissioner uses intelligence gathered from individual cases to inform her insight and compliance function. This aligns with the goal in her draft "Openness by design"<sup>1</sup> strategy to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in her "Regulatory Action Policy"<sup>2</sup>.

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<sup>1</sup> <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

<sup>2</sup> <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

## Right of appeal

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30. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

31. 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.

32. 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 .....**

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