

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 8 April 2021

Public Authority: Trowbridge Town Council
Address: The Civic Centre,
St Stephen's Place,
Trowbridge,
BA14 8AH

Decision (including any steps ordered)

1. The complainant requested information on restrictive covenants relating to a land transfer from Trowbridge Town Council.
2. Trowbridge Town Council refused the request under Section 14 of the FOIA. However, during the Commissioner's investigation it disclosed the requested information on an informal basis.
3. The Commissioner's decision is that the request is covered by the EIR and Trowbridge Town Council has failed to comply with Regulation 5(2) by not disclosing the information within 20 working days. However, as the requested information has been disclosed she does not require any steps to be taken.

Request and response

4. On 26 February 2020 the complainant wrote to Trowbridge Town Council (the Council) and requested information in the following terms:

"I would like to arrange to make an appointment to come in and review a public document.

In 2013 The town park was asset transferred from Wiltshire Council to Trowbridge town Council.

The transfer of the Land from Wiltshire county council to Trowbridge town council included a 12 page document which contains restrictive covenants that are attached to the land.

The land which donated in 1887 by Sir Robert Brown to the people of Trowbridge for free public use and enjoyment, and in the care of the council for maintenance.

I wish to inspect this restrictive covenant document to read what the covenant states regarding the rights of free use and enjoyment of the park for residents and visitors. (TCC, Just voted to introduce to charge fees for use of the park, including charging for free public events and free performances etc) please arrange a mutually convenient time and a date so that I may be able to come in and view the document containing the restrictive covenants for Trowbridge town Park”.

5. The Council responded on 27 February 2020. It applied Section 14 of the FOIA to the request on the basis that it was vexatious.
6. On 27 February 2020 the complainant requested an internal review. The Council responded within hours the same day suggesting the requested information was available on its website and referred the complainant directly to the Commissioner.
7. The complainant disputed the requested information was available.

Scope of the case

8. This Decision Notice should be read in conjunction with Decision Notice IC-92470-D7H1 which relates to a request made to the Council by the complainant on the same day. The Council responded to both requests in a single communication applying Section 14 of the FOIA.
9. The complainant contacted the Commissioner on 27 February 2020 to complain about the way his request for information had been handled. In particular, he was unhappy with the Council’s decision to apply the FOIA when in his view the information was clearly environmental. Also he was dissatisfied with its decision to classify the request as vexatious and not carry out a proper and comprehensive internal review.
10. The Commissioner contacted the Council on 19 August 2020.
11. Following the Commissioner’s intervention, the Council disclosed the requested information on 21 August 2020 in an attempt to resolve the matter informally. However, it still maintained it was correct to classify the request as vexatious when it was first submitted.
12. The Commissioner discussed the matter with the complainant over the telephone on 21 August 2020 and said as the requested information had been disclosed it was somewhat academic to issue a Decision Notice (DN) regarding the Council’s application of Section 14 of the FOIA.

However, she did agree it would be possible to issue a DN recording his dissatisfaction with the way in which the Council had handled his request and the late disclosure of the requested information.

13. The Commissioner is mindful of the effect that dealing with such complaints when information has been disclosed, will have, both in relation to her duty to make effective use of her finite resources, and in ensuring that her office and the FOIA are not brought into disrepute by progressing complaints which do not justify serious consideration.
14. While recognising the complainant's concerns at the way in which his request for information was handled, the Commissioner is also mindful that he has been provided with the requested information.
15. Accordingly, in a case such as this, the Commissioner would not normally consider it either necessary or an appropriate use of her regulatory resources to progress the Council's application of Section 14 further.
16. However, given the circumstances of this case, the complainant's views on the Council's application of Section 14 of the FOIA and the history of engagement between the complainant and the Council in respect of this and other requests for information, the Commissioner has decided to accept the complainant's application for a decision and to issue a DN on the procedural aspects of the handling of this request.
17. In proceeding to a DN in this case, the Commissioner acknowledges that section 50(1) of the FOIA states that any person can apply to the Commissioner for a decision on whether a request for information was dealt with in accordance with the requirements of Part I of the FOIA.

Reasons for decision

Is the requested information environmental?

18. Regulation 2(1) of the EIR defines environmental information as being information on:

(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the

elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;

(d) reports on the implementation of environmental legislation;

(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and

(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);

19. The Commissioner considers that, as the information requested in this case is relates to restrictive covenants applied to land, it is a measure highly likely to affect the elements and factors of the environment as defined at regulations 2(1)(a) and 2(1)(b). She is therefore satisfied that the information falls within the definition of environmental information at regulation 2(1)(c) of the EIR.

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

20. Regulation 5(1) of the EIR states that "*a public authority that holds environmental information shall make it available on request.*" This is subject to any exceptions that may apply.

Regulation 5(2) of the EIR – Time to respond

21. As explained above, Regulation 5(1) requires a public authority to disclose requested information. Regulation 5(2) of the EIR requires this information to be provided to the requester within 20 working days following receipt of the request.
22. The complainant requested the information on 26 February 2020 but the Council did not disclose it until 21 August 2020.

23. This is a period of more than the required 20 working days. Therefore the Commissioner finds that the Council breached regulation 5(2) of the EIR.

Right of appeal

24. 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

25. 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.
26. 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

Laura Tomkinson
Group Manager
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Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF