

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

### **Decision notice**

**Date:** 23 November 2021

**Public Authority:** Birstall Parish Council  
**Address:** Council Office, Village Hall  
Birstall Road,  
Birstall,  
Leicestershire LE4 4DH

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

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1. The complainant requested information from Birstall Parish Council, Leicestershire ("the Parish Council") about the local BMX bike track. The Parish Council provided some information and explanations, and links to documents that were published online. After reconsidering the request under the EIR, at the request of the Commissioner, the Parish Council provided some further information and links, but stated that no information was held in respect of certain parts of the request; it also considered that another part of the request was expressed in too general a manner.
2. The Commissioner's decision is that the Parish Council holds no information in relation to the relevant parts of the request. However, it did not inform the complainant that it decided that one part of his request was expressed in too general a manner, within 20 working days, nor subsequently offer him any advice and assistance in respect of this; the Parish Council therefore breached regulation 9(2) of the EIR.
3. The Commissioner requires the Parish Council to take the following steps to ensure compliance with the legislation.
  - Contact the complainant and ask him to provide more particulars in respect of the correspondence being requested, and offer assistance in how he might provide the further particulars.

4. The Parish Council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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5. On 24 June 2020, the complainant wrote to the Parish Council via the website What Do They Know and requested information in the following terms (numbering added for ease of reference):

*"BMX TRACK MEADOW LANE*

1. *The audit trail with regards to the work currently being carried out to the BMX track including:*

*a) information provided to Councillors on 25/3/2019 ( 3368b ) and 19/8/2019 ( 3689b ) and*

*b) any subsequent*

*i) invoices*

*ii) plans*

*iii) correspondence*

*iv) payments*

*v) alternative quotes obtained under Financial Regulations 11.1.h.*

2. *Plus details of the current situation with regard to progress and payment."*

6. The Parish Council responded on 22 July 2020. It commented that it considered the complainant had already received some of the information, and considered the request to be both "vexatious" (section 14(1) of the Freedom of Information Act 2000 (FOIA)) and "repeated" (section 14(2) of the FOIA). It also responded as follows:

- The information provided to the Councillors (which had been provided to them in the 2019 meetings) was not held;
- An invoice (for £5000) had already been provided as part of a finance report in June 2020;
- Plans had been placed in the public domain in November 2019 (link provided);

- *"Ongoing costs"* were included in *"the Parish Council's required Precept Report to Charnwood Borough Council"* and these reports were available online (link provided);
7. The Parish Council also provided some general explanations. It stated that it had obtained quotes in 2011-2012, and was not entering into a new contract. It commented: *"Section 1.11h in the Council's Financial Regulations relates to contracts"*.
  8. It explained it had set aside an amount of its budget for ongoing maintenance works, which were *"democratically decided and agreed by the (Parish) Council or one of its Committees"*.
  9. It further commented that: *"Progress reports, when they are received are taken to the (Parish) Council's Estates & Recreation Committee"* and added: *"Currently, due to COVID-19 improvements works have been paused."*
  10. Following an internal review, the Parish Council reiterated to the complainant that, whilst it had distributed hard copies of *"supporting paperwork"* at meetings on 25 March 2019 and 19 August 2019, this was, now, not held by the Parish Council.

## **Scope of the case**

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11. The complainant contacted the Commissioner on 27 September 2020 to complain about the way in which his request for information had been handled.
12. The Commissioner accepted the case for investigation and subsequently wrote to the Parish Council. She advised the Parish Council that the information that had been requested would be likely to be "environmental" within the definition set out in the EIR. Specifically, since it would relate to the construction and maintenance of an outdoor track for use by riders of BMX bikes, it would fall within the definition at regulation 2(1)(c) of the EIR: *"information on measures and activities affecting, or likely to affect, the environment"*.
13. The Commissioner explained, therefore, that she required the Parish Council to issue a further response to the complainant, under the EIR.
14. The Parish Council issued a fresh response to the complainant on 19 August 2021. It clarified that its position, as regards the request, was as follows:

- 1a) ("*information provided to Councillors on 25/3/2019*"):  
information not held.
  - 1b) "*Any subsequent...*"
    - (i) *invoices*: it provided some information.
    - (ii) *plans*: information not held.
    - (iii) *correspondence*: the Parish Council's position was that this part of the request was expressed in too general a manner.
    - (iv) *payments*: the Parish Council provided a link.
    - (v) *alternative quotes*: information not held.
  - 2) ("*Details of the current situation with regard to progress and payment*"): information not held.
15. The complainant informed the Commissioner that he was dissatisfied with this response. He considered that his request was clear, and considered that more information would be held by the Parish Council in respect of (the Commissioner understands) parts 1a), 1b)(ii), 1b)(v) and part 2, respectively.
  16. The Parish Council reconsidered the request, as required by regulation 11 of the EIR, but has maintained its position.
  17. The Commissioner is aware that the complainant is particularly dissatisfied that some documents which were circulated at the 2019 meetings may have been disposed of. He considers they should have been retained under the Parish Council's retention policy.
  18. However, whilst the Commissioner may provide advice about this type of issue, she has no remit, in considering the handling of his request under the EIR, to comment on this.
  19. This decision notice covers whether any information, falling within the scope of parts 1a), 1b)(ii), 1b)(v) and part 2 of the request, is held by the Parish Council.
  20. It also covers whether the Parish Council complied with the requirements of regulation 9(2) of the EIR in respect of part 1b)(iii), which it considered to be expressed in too general a manner.

## Reasons for decision

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### Regulation 12(4)(a) – information not held

21. 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.
22. The complaint under consideration in this part of the notice relates to the Parish Council's assertion that no information is held, in respect of the following parts of the request:
  - *1a) information provided to Councillors on 25/3/2019 ( 3368b ) and 19/8/2019 ( 3689b );*
  - *1b)(ii) any subsequent plans;*
  - *1b)(v) any subsequent alternative quotes;*
  - *2) details of the current situation with regard to progress and payment*
23. In cases where there is a dispute over whether information is held, the Commissioner applies the civil test of the balance of probabilities in making her determination. This test is in line with the approach taken by the Information Rights Tribunal when it has considered whether information is held, in cases which it has considered in the past.
24. The Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the public authority to check whether the information is held, and any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is held.

#### *The complainant's view*

25. The complainant explained that he expected the information to be held. In particular, he expected the information provided to the Parish Councillors at the 2019 meetings to have been retained. He considered that the information would relate to decisions taken by the Parish Council, and that the Parish Council should hold information about the decisions it makes, and, moreover, should make it publicly available.

#### *The Parish Council's view*

26. The Parish Council has described to the Commissioner the searches that it carried out for information, on receiving the request.

27. With regard to the information provided to councillors for their perusal in the 2019 meetings, the Parish Council explained that these documents had been provided to it, prior to the meetings, by means of a "googledoc" link in an email. The Commissioner understands that printed copies of the documents were then distributed at the meeting, but these copies were not retained.
28. The Parish Council explained that, on receiving the complainant's request, it had attempted to access the googledoc link, but found that it no longer worked, and therefore its position was that the information was not held.
29. The Parish Council has explained the other searches it carried out. It explained that searches were made on the clerk's work computer, including emails and folders, and in the Parish Council's "hard copy" filing system. The Parish Council also searched through documents and information which had been uploaded onto the Parish Council website, as well as examining an edition of the *Birstall Post* online which had included an editorial relating to the new works and designs.
30. The searches did not locate the information listed in paragraph 20 of this notice. The Parish Council has stated, simply, that there was nowhere else for it to look.

### **The Commissioner's decision**

31. The Commissioner acknowledges that, whilst it was reasonable for the complainant to expect the Parish Council to have retained information distributed at the previous year's meetings, and potentially to hold the other information he requested, it is not for her to comment on whether information *should* be held. Her remit is to establish whether, on the balance of probabilities, information falling within the scope of the request is held.
32. She is satisfied that the Parish Council carried out adequate and appropriately-targeted searches for the information referred to in parts 1a), 1b)(ii), 1b)(v), and 2) of the request, and that the searches would have been likely to locate the information, if held.
33. Her decision is that, on the balance of probabilities, the Parish Council was correct to state that it did not hold the information.

### **Regulation 9 – advice and assistance**

34. Regulation 9(2) of the EIR states that:

*"Where a public authority decides that an applicant has formulated a request in too general a manner, it shall:*

*(a) ask the applicant as soon as possible and in any event no later than 20 working days after the date of receipt of the request, to provide more particulars in relation to the request; and*

*(b) assist the applicant in providing those particulars."*

35. In this case, the Parish Council decided that the complainant's request for "[any subsequent] *correspondence*" (part 1b)(iii) of the request) was expressed in too general a manner.
36. However, it did not advise the complainant of this until it issued its response of 19 August 2021: over a year after he made the request.
37. The Commissioner notes that, in that response, it failed to ask him for further particulars, and to offer assistance in providing further particulars, in order to clarify what he was asking for.
38. She is surprised that the Parish Council considered this part of the request to be expressed in too general a manner since in her view it appears that what is being sought is clear.
39. The Commissioner is aware that there are issues dating back several years in relation to the complainant's relationship with the Parish Council clerk and, by extension, with the Parish Council, which has impacted upon the amount of direct contact between the clerk and the complainant. The Commissioner is aware that this may have affected the manner in which the Parish Council belatedly advised the complainant that his request for "*correspondence*" was "*too general*".
40. However, the fact remains that the Parish Council's position regarding this part of the request was not explained to the complainant until August 2021, and that it did not offer advice and assistance in providing further particulars to clarify this part of the request. This is contrary to the requirements of regulation 9(2).

### **The Commissioner's decision**

41. The Commissioner finds that the Parish Council breached regulation 9(2) of the EIR in relation to part 1b)(iii) of the request of the request: "[any subsequent] *correspondence*".
42. She orders the Council to contact the complainant and ask him to provide more particulars in respect of the correspondence being requested, and offer assistance in how he might provide the further particulars.

## Right of appeal

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43. 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: 0203 936 8963

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)

44. 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.
45. 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 .....**

**Ben Tomes**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**