

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 7 September 2021

Public Authority: Bournemouth Christchurch & Poole Council

Address: Town Hall
Bourne Avenue
Bournemouth
BH2 6DY

Decision (including any steps ordered)

1. The complainant has requested information relating to a specific planning application. Bournemouth Christchurch & Poole Council disclosed some information and confirmed that other information was not held.
2. The Commissioner's decision is that Bournemouth Christchurch & Poole Council disclosed all the relevant information it held in accordance with regulation 5(1), that in confirming further information was not held, it correctly applied regulation 12(4)(a), and that in issuing a late internal review, it breached regulation 11(4).
3. The Commissioner does not require Bournemouth Christchurch & Poole Council to take any steps.

Request and response

4. On 6 November 2020, the complainant wrote to Bournemouth Christchurch & Poole Council (the "council") and requested the following information:

"In respect of Planning Application 8/20/0752/OUT

a. What calculations have been performed by BCP Highways to verify the scheme meets applicable standards in terms of parking bay size, aisle size between rows of bays, clearance between edge of parking bay and wall, access ramp slope and length, change of access ramp slope with bends turning and radii for vehicles entering the car park from the access ramp.

b. What Parking Standards do BCP Highways believe this application complies with?"

5. The council responded on 11 November 2020 and disclosed some information.
6. The complainant requested an internal review on 23 November 2020. The council sent the outcome of its internal review on 5 February 2021. The review found that the review response was late and confirmed that it did not hold any additional information relevant to the request, citing the exception in regulation 12(4)(a).

Scope of the case

7. On 1 February 2021 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. The Commissioner confirmed with the complainant that her investigation would consider whether the council had correctly confirmed that further information relevant to the request was not held.

Reasons for decision

Regulation 5(1) – duty to make environmental information available on request / Regulation 12(4)(a) – information not held

9. Regulation 5(1) of the EIR sets out the duty for public authorities to provide environmental information held on request.

10. Regulation 12(4)(a) provides an exception to the duty in regulation 5(1) where requested information is not held.
11. The council has clarified that the original request asked for calculations relating to car park provision forming part of an outline planning application.
12. The council confirmed that it provided a response to the request on 11 November 2020, where it confirmed, in response to point 1, how the LHA (Local Highway Authority) had assessed the application and confirmed the standard used (Dorset Council Parking Standard). The council explained that its response also confirmed that no further calculations had been undertaken and that, other than the initial assessment, no further information regarding calculations was held.
13. The council has explained that at the time of the receipt of the request, it had published the application form, plan drawings, representations from other agencies and individuals as is usual for planning applications. It confirmed that information relating to the size of parking bays had been published as part of the LHA representation to the application which were confirmed as acceptable to the Dorset Council standard being used. The council explained that all information that it holds in relation to the outline planning application is published on its website under the outline planning reference (8/20/0752/OUT).
14. The complainant disputes the council's position and considers that more relevant information should be held.
15. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
16. To assist with this determination the Commissioner asked the council to address a range of standard questions she routinely uses in such scenarios. The questions and summaries of the council's responses (in italics) are set out below.

17. What searches have been carried out to check no information was held within the scope of the request and why would these searches have been likely to retrieve any relevant information?

The council confirmed that it carried out electronic searches of LHA planning files consisting of:

- *searches using application reference number*
- *searches using site location address*
- *searches in officer and service mailboxes*

The council confirmed that information relating to applications are saved to its systems using the application reference number.

18. If searches included electronic data, which search terms were used and please explain whether the search included information held locally on personal computers used by key officials (including laptop computers) and on networked resources and emails.

The council reiterated that searches using reference number and site address were carried out. It also confirmed that information is not stored on local drives but is saved to the council's network and service database.

19. If the information were held would it be held as manual or electronic records?

The council confirmed that, if held, the information would be stored as electronic records.

20. Was any recorded information ever held relevant to the scope of the complainant's request but deleted/destroyed?

The council confirmed that it has not destroyed or deleted relevant information.

21. What does the council's formal records management policy say about the retention and deletion of records of this type? If there is no relevant policy, can the council describe the way in which it has handled comparable records of a similar age?

The council explained that information submitted as part of a planning application is retained permanently on its website. It confirmed that the information requested does not relate to submitted formal comments merely the workings related to preparing the formal response. The

council confirmed that LHA working files are retained for 5 years following the date of last use.

22. Is there information held that is similar to that requested and has the council given appropriate advice and assistance to the applicant in line with the duty contained at regulation 9 of EIR?

The council confirmed that a proposed basement parking plan was published on its website at the time of the request, however, this does not show specific measurements as per the request. It explained that the published LHA representation does confirm measurements in line with the assessed Parking Standard and this was confirmed in its EIR response to the complainant.

23. The Commissioner is mindful that the complainant genuinely believes that the council should hold the calculation information they have requested.
24. However, this in itself does not constitute evidence which contradicts the council's position. It is for the council to determine what calculations it needs to carry out and what information should be recorded in order to fulfil its functions as a planning authority. The Commissioner considers that the searches carried out by the council were sufficient and would locate relevant information if it was held.
25. On the basis of the available evidence the Commissioner considers that, on the balance of probabilities the council has disclosed all the relevant information that it holds and correctly confirmed that no further information is held.
26. In view of the above the Commissioner has concluded that the council complied with regulation 5(1) and, in confirmed that information was not held, correctly applied the exception in regulation 12(4)(a).

Regulation 11 – internal review

27. Regulation 11 of the EIR sets out the duties of public authorities in relation to handling complaints about the handling of requests (internal reviews).
28. In relation to the timeframe for carrying out internal reviews, regulation 11(4) states:

"A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the date of receipt of the representations."

29. In this case the complainant asked the council to carry out an internal review on 23 November 2020 and the review response was issued on 5 February 2021.
30. The Commissioner has, therefore, concluded that the council failed to carry out an internal review within 40 working days and breached regulation 11(4).

Right of appeal

31. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

32. 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.
33. 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

Ian Walley
Senior Case Officer
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