

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 23 August 2022

Public Authority: Norwich City Council
Address: City Hall
St Peters Street
Norwich
NR2 1NH

Decision (including any steps ordered)

1. The complainant has requested information from Norwich City Council (the Council) about a planning application relating to local tennis courts.
2. The Commissioner's decision is that, on the balance of probabilities, the Council has now disclosed all of the information which it holds within the scope of the request. However, the Commissioner finds that the Council has breached regulation 11(4) of the EIR as it did not provide its internal review decision within the statutory timeframe.
3. The Commissioner does not require the Council to take any remedial steps.

Request and response

4. On 25 August 2021, the complainant wrote to the Council and requested information in the following terms:

"On 12th January 2017 an email was sent from [name redacted] to [name redacted] councillors cc Cllr [name redacted] and Cllr [name redacted]. This email informed [name redacted] councillors that the Council were considering extending the Norwich Parks Tennis programme to Heigham Park. The Council submitted their first planning application for 3 all-weather courts 2 months later on 16th March 2017.

1. How was the decision taken to proceed with the Planning Application?
2. Who made the decision?
3. Where is the decision recorded?"
5. The Council responded on 21 September 2021. It disclosed some information which it considered to be within the scope of the request. It stated that the decision to proceed with the project was taken at the meeting of the Council on 21 February 2017, and that the planning application would have followed on from that decision. It also stated that the decision was taken by full Council and is recorded in the minutes of that meeting, and provided a link to the meetings calendar on the Council's website where the minutes from the meeting can be found.
6. Following an internal review the Council wrote to the complainant on 3 December 2021. It provided a link to one further document which it also considered to be within the scope of the request, and explained that it should be read together with the document for which the link was provided in the initial response in order to answer the questions set out in the request. It also acknowledged that the request should have been handled under the EIR rather than FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 7 December 2021 to complain about the way their request for information had been handled. Their grounds for complaint were that they do not consider that the information which the Council had provided in its responses answers the specific questions set out in the request.
8. The Commissioner considers the scope of his investigation and the following analysis is to determine, on the balance of probabilities, if the Council has disclosed all information which it holds within the scope of the request.

Reasons for decision

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

9. Regulation 5(1) of the EIR states that any person making a request for information is entitled to have that information communicated to them. This is subject to any exceptions that may apply.

10. 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 Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
11. In other words, in order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any – or additional – information which falls within the scope of the request (or was held at the time of the request).

The complainant's position

12. As noted earlier in this notice, the complainant does not consider that the information provided by the Council answers the three questions set out in the request, and that the Council may hold further information within the scope of the request. The complainant put forward the following argument during the Commissioner's investigation to support their understanding that further information exists:

"Although I cannot be 100% certain that there are NCC papers that relate to the genesis of this project I do have reasons to believe that there are, among them: the budget (£460,000 covering 2 park sites) is relatively high, funding sources were extremely scarce, all funding was ultimately sourced from Council funds (not external), budgets were closely scrutinised for this kind of expenditure."

The Council's position

13. In its submissions to the Commissioner, the Council set out that the scope of the request was limited to the decision-making surrounding the planning application for the Heigham Park Tennis Courts, and that senior officials had identified that the information relevant to the request was already in the public domain. The Council provided links to this publicly available information, which it considers answers the questions set out in the request.
14. The Council acknowledged that an alternative interpretation of the request could have been 'who within the authority approved the submission of planning permission documents following the approval of Council to proceed with the project', however it considers that this information is also already publicly available on the Council's planning portal, which shows that the application was submitted by the Parks and Open Spaces Manager.
15. The Council offered further explanation as to why it considered that the documents provided in its responses to the complainant answered the questions set out in the request. It stated:

"the decision-making body of Norwich City Council is the Full Council. All decisions made by Full Council are publicly available via the Council's website.

The decision to undertake the works was subject to, and bound with, the approval of funding; this decision was taken as part of a wider package of funding decisions within the Council Budget – specifically 'the proposed general fund budgets for 2017-18 and transformation plan for 2018-19'. Given this, the Council's response (albeit as part of the Internal Review) directed the requestor to the relevant minutes of this available via the Council's website."

16. During the Commissioner's investigation the Council set out its efforts to identify any further information which it holds about the decision relating to submission of the planning application. It noted that as the request was specifically about the decision-making relating to the planning application, and decision-making documents follow a specific formal process and are held in a specific formal format, that it did not believe that wider searches for information were required beyond that process and format.
17. In providing its responses to the complainant at initial response and internal review stages, the Council states that it consulted the following relevant and senior officers, and provided information to the complainant which was identified by those officers:
 - Parks and Open Spaces Manager,
 - Head of Service for Planning and Regulation,
 - Head of Service for Environmental Services.
18. In reconsidering how it had previously handled the request for information, the Council reviewed all records and correspondence held relating to the planning application process, and whilst other documents are held relating to the Heigham Park Tennis Courts and the associated planning application, these further documents were identified as falling outside of the scope of the request as they do not specifically relate to the 'decision taken to proceed with the planning application' which is the express focus of the complainant's request. The Council notes that it also consulted the following additional officers as part of its review into its initial handling of the request:
 - Planning Officer who processed the application and provided pre-application advice,
 - Democratic Services Assistants,
 - Democratic Services Manager,
 - Monitoring Officer/Head of Service for Legal and Procurement,
 - Executive Director for Development and City,

- Leader of the Council.

The Commissioner's analysis

19. In reaching his decision in this case, the Commissioner has considered the specific wording of the original request for information, along with the complainant's arguments and the submissions provided by the Council to explain how it reached its position regarding the request.
20. The Commissioner is satisfied that the Council has appropriately considered the terms of the request, and therefore reached an objective reading of the scope of the request.
21. The Commissioner is further satisfied that the Council has taken an appropriate and proportionate approach to establishing if it holds any further information within the scope of the request, by reviewing all documents relating to the Heigham Park Tennis Courts planning application and considering if any of those documents relate to the decision-making behind proceeding with the application, and also by consulting all relevant officers within the authority who have knowledge of the works at Heigham Park Tennis Courts.
22. The Commissioner finds that the Council is correct not to disclose the further documents which do not relate to the decision-making, and therefore fall outside of the scope of the request.
23. The Commissioner understands the complainant is seeking answers to the specific questions set out in their request, however the legislation only obliges a public authority to provide information which it already holds in recorded form. The legislation does not provide that a public authority should 'create' new information in order to respond to a request, for example, providing explanations to supplement the information which it discloses in response to a request, unless of course it already holds that explanation in recorded form.
24. Whilst the Council may not hold the specific direct answers to the questions in the request, the Commissioner considers that the Council is correct to respond to the request with information which it does hold within the scope of 'decision-making' leading to the submission of the particular planning application. From the information disclosed by the Council the complainant can deduce the answers to the questions set out within the request for information.
25. The Commissioner finds that, on the balance of probabilities, the Council has disclosed all information which it holds within the scope of the request, and has therefore met its obligations at regulation 5(1) of the EIR.

Other matters

26. The Commissioner notes the Council's reference to regulation 6(1)(b) of the EIR in its submissions to him, however this procedural exception can only be applicable when a requester has specified the form or format in which they would like to receive information which a public authority finds to already be reasonably accessible by other means. It cannot be applied in the same manner as section 21 of FOIA (information accessible to applicant by other means). The Commissioner cannot see that the complainant in this case has specified the form or format in which they would like to receive the requested information at any point. He has therefore not considered the Council's reference to regulation 6(1)(b) in his analysis.

Right of appeal

27. 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

28. 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.
29. 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

Claire Churchill
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