

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

### **Decision notice**

**Date:** 20 September 2022

**Public Authority:** Bolton Council

**Address:** Town Hall  
Bolton  
BL1 1RU

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

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1. The complainant has requested information with regards to the Blue Badge Scheme. Bolton Town Council (the council) provided the information it held.
2. The Commissioner's decision is that the council holds no further information and that regulation 12(4)(a) of the EIR is engaged – information not held. The Commissioner did find that the council breached regulation 5(2) of the EIR as it did not provide the information it did hold within the required 20 working days.
3. As the council has provided the information it does hold, the Commissioner does not require it to take any steps.

## Request and response

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4. On 1 October 2021 the complainant made the following information request to the council:

"I request a copy of the 'Assessment' criteria used by Bolton council when determining applications for a Blue Badge which are 'Discretionary' in nature and do not fall within 'Automatic' entitlement, for example scoring 8 points or more for PIP Mobility under 'Moving Around'"

5. On 3 November 2021 the council provided the complainant with a link<sup>1</sup> to the Department of Transport's website which it stated it uses as the assessment criteria and listed the 13 points for people who may be eligible for a blue badge.

6. The complainant requested an internal review on 3 November 2021 stating:

"...the requested information has not been provided. I have asked for the internal procedures / otherwise known as 'Assessment' criteria used by Bolton council in relation to blue badge applications which do not fall within 'Automatic' entitlement, for example scoring 8 points or more for PIP Mobility under 'Moving Around' however this requested information has not been provided."

7. He also asked that the council respond under the EIR not the Freedom of Information Act 2000 (the FOIA).

8. The council provided its internal review on 1 December 2021. It confirmed that no internal document is used and refused the request under regulation 12(4)(a) of the FOIA – information not held.

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<sup>1</sup> <https://www.gov.uk/government/publications/blue-badge-can-i-get-one/can-i-get-a-blue-badge>

## Scope of the case

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9. The complainant contacted the Commissioner on 17 January 2022 to complain about the council's response that the information is not held and the time it took to respond to his request.
10. The scope of the case is for the Commissioner to determine whether the request falls under the EIR or FOIA and then go on to determine whether or not the council holds any further information.
11. The Commissioner will also determine whether the council responded to the request outside of the required timeframe.

## Reasons for decision

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### Is the requested information environmental information?

12. The Commissioner has first considered whether the requested information constitutes environmental information as defined by regulation 2(1) of the EIR.
13. The Commissioner has considered the findings in a First Tier Tribunal Decision EA/2020/0308P<sup>2</sup> which stated at notable paragraphs:
  25. The Department submits, and the Panel agrees, that the Blue Badge Scheme is a 'measure' which affects a range of environmental issues including the number, location, and type of parking bays; congestion in city centre locations; impact on the pedestrian areas in urban areas and thus land use; and increased use of private vehicles.
  26. The Panel also considers that the number of Blue Badges issued will decrease use of public transport, increase the number and distances of journeys by private cars by Blue Badge holders and hence increase the emissions and pollution emanating from such vehicles.

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<sup>2</sup><https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2896/O'Farrell,%20Sean%20-%20EA.2020.0308%20%20Allowed.pdf>

29. Taking all the above into account, in the Panel's view the information sought by Mr O'Farrell about the Blue Badge Scheme satisfies the definition of 'environmental information' as defined in Regulation 2(1) EIR because it is information on a 'measure' (policy and legislation) that affects 'the state of the elements of the environment' (air and land) and 'the factors that affect those elements' (emissions and roads etc)."

14. The Commissioner therefore concludes in this case, that the complainant's request also falls under the EIR based on the Blue Badge Scheme being a 'measure' (policy and legislation) that affects 'the state of the elements of the environment' (air and land) and 'the factors that affect those elements' (emissions and roads etc).

### **Regulation 12(4)(a) of the EIR -Information held/ not held**

15. Regulation 5(1) of the EIR requires a public authority that holds environmental information to make it available on request.
16. Regulation 12(4)(a) of the EIR allows a public authority to refuse to provide the requested information if it does not hold it at the time of the request being received.
17. Where there is some dispute between the amount of information identified 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 decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).
18. In this case, the council provided the complainant with the external guidance it uses on the Department of Transport's website.
19. It has clearly stated in its internal review response that its officers assess eligibility in accordance with this government criteria and that no internal guidance is held or used.
20. The Commissioner has considered the council's responses to the complainant, and it is reasonable for him to accept the council's assertion of the assessment criteria which it uses to establish or decide which individuals are able to qualify for a blue badge. Having looked at the Department of Transport link that was provided to the complainant, it does provide a list of those "who may get a Blue Badge".
21. The Commissioner accepts the council's position that this is their assessment criteria and therefore finds on the balance of probabilities

that council has provided the information it holds and does not hold any other information.

22. Therefore, the Commissioner finds that regulation 12(4)(a) of the FOIA is engaged.

**Regulation 5(2) of the EIR - Time for compliance**

23. Regulation 5(2) of the EIR states that "information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request."
24. In this case, the complainant made his request on 1 October 2021 and the council did not provide the information it held until 3 November 2021.
25. This is outside the required 20 working days and therefore the Commissioner finds that the council breached regulation 5(2) of the EIR.
26. As the council has since provided the information it does hold, the Commissioner does not require it to take any steps.

## Right of appeal

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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: 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)

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 .....**

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