

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 22 December 2022

Public Authority: South Hams District Council
Address: Follaton House
Plymouth Road
Totnes
TQ9 5NE

Decision (including any steps ordered)

1. The complainant has requested, from South Hams District Council ("the Council") information about its waste collection services contract. The Council disclosed some information but the complainant remained dissatisfied with one element of his request concerning 'risk transfer'. The Council advised that it had disclosed all the information held regarding risk transfer, which the complainant disputed.
2. The Commissioner's decision is that, on the balance of probabilities, the Council holds no further information about risk transfer and therefore complied with regulation 5(1) of the EIR. No steps are required.

Background

3. The Commissioner is currently dealing with a separate, related request concerning the same contract. That is being dealt with under reference IC-169490-Y4H5; a decision notice will be issued in due course.

Request and response

4. On 5 November 2021, the complainant wrote to the Council and requested information in the following terms:

"1. What is the total value of the contract awarded to FCC Environment for the collection and disposal of household recyclable

items and garden waste (the contract)? Should this not be a description of the full scope of the contract please, as you are so obliged in section 16(1), explain that scope.

2. On what date was the contract signed?

3. On what date did the contract commence?

4. What was the duration of the contract?

5. How much of the total value of the contract was attributed to the collection of garden waste?

6. By how much has the contractual price been reduced following the failure of FCC Environment to meet its contractual obligations to collect garden waste?

7. Risk transfer should be a feature of outsourcing contracts. What were the provisions made in the contract to transfer risk from the Council to FCC Environmental?

8. Was the contract negotiated under EU procurement regulations and if so on what date was notice of the award of the contract published in the Official Journal of the European Communities?"

5. On 2 December 2021, the Council responded. It provided some information within the scope of the request but refused to provide the remainder. It did not cite any exceptions.
6. The complainant requested an internal review on 11 December 2021 (when doing so he raised further questions which are being dealt with in a separate complaint).
7. The Council sent the outcome of its internal review on 13 April 2022. It provided some more information and cited reliance on regulation 12(5)(e) of the EIR for the remainder.

Scope of the case

8. The complainant contacted the Commissioner on 2 February 2022 to complain about the way his request for information had been handled. This was prior to receipt of his internal review. Following receipt of his internal review the complainant confirmed that he remained dissatisfied with the response to parts (5), (6) and (7) of his request, as well as the length of time the internal review had taken.
9. Following further correspondence between the parties the complainant advised the Commissioner:

"The questions in my original FOI request made on 5 November [2021] are either now irrelevant or have been repeated in one form or another except for question 7... The answer to this question was evasive. I believe the straight answer should again be 'none' and I would welcome confirmation".

10. The Commissioner will consider this below.

Reasons for decision

11. Regulation 5(1) of the EIR states that a public authority that holds environmental information shall make it available on request, if it is not subject to an exception.

12. The Council has explained:

"Section III of the contract notice [which the complainant has been given] ... shows that the economic and financial standing and technical and professional ability of the successful contractor were considered as part of the transfer of risk to the contractor. The contractor was required to demonstrate that they met selected criteria in order to be considered during the tendering process. Section III also lists the requirement of a performance bond and parent company guarantee. The considerations relating to economic and financial standing and technical and professional ability are referred to in the procurement documents, which were released to the requester. The performance bond and parent company guarantee were also released to the requester".

13. It has also previously advised the complainant that it had included further detail of what assurances were provided during its procurement process, namely:

"During the procurement process, the contractor provided the following demonstrations of assurance:

- Competitive dialogue with the contractor
- A performance bond was produced
- Positive case studies were provided, including successful operation in a neighbouring authority for over 10 years
- Indemnity insurance
- Proof of relevant accreditation in regard to health and safety, ISO certification etc
- Business Continuity Plans
- Disaster Recovery Plans
- Environmental and Social Policies

- The TUPE of existing staff to retain skills and knowledge of the workforce
 - The appointment of dedicated contract manager to specifically manage the contract”.
14. The complainant is of the view that: “risk transfer should be a feature of outsourcing contracts” and has also commented that: “[i]t may well be that there was no transfer of risk to the contractor, if so then the Council should say so”.
 15. The legislation does not require the council to answer questions or give opinions, it is only required to consider disclosure of any recorded information held.
 16. The Commissioner has viewed the full contract as part of his investigation for case IC-169490-Y4H5, and has discerned no further relevant information about risk transfer. As the request only seeks such information as is in the contract, the Commissioner accepts that the Council does not hold any further information within scope of part (7) of the complainant’s request.
 17. On the balance of probabilities therefore, the Commissioner finds that the Council complied with regulation 5(1).

Right of appeal

18. 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

19. 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.

20. 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

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