

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 21 November 2022

Public Authority: Calderdale Council

Address: Town Hall
Crossley Street
Halifax
HX1 1UJ

Decision (including any steps ordered)

1. The complainant has requested information with regards to a specific planning application. Calderdale Council (the council) initially provided some information, but during the Commissioner's investigation, it amended its position and advised the complainant that the actual information requested was not held.
2. The Commissioner's decision is that the requested information is not held and therefore exempt under regulation 12(4)(a) of the EIR.
3. The Commissioner does not require any steps.

Request and response

4. On 28 December 2021, the complainant made the following information request to the council:

“Please can you provide me with the evidence to show developer compliance with Defra and Natural England Guidance (Oct 2014) for protected species in respect of Land South of Brooklands (Planning applications 16/01381/OUT and 2001509) This details is not available on the public planning portal and I remain concerned having witnessed the engineering works to date that a Construction and Engineering Management plan to mitigate damage to species and their habitat has not been implemented or monitored.”
5. The council responded on 18 February 2022 disclosing information to the complainant.
6. The complainant requested an internal review on 11 March 2022. The council located and provided the complainant with further information.

Scope of the case

7. The complainant wrote to the Commissioner on 14 March 2022 stating that the council had not provided her with the information requested.
8. During the Commissioner's investigation, on 20 October 2022, the council revised its response to the complainant, it provided further information to her on the subject, stated the correct regime for responding was under the EIR, it also advised that the actual information she has requested was not held.
9. The scope of the case is for the Commissioner to determine whether the council holds information falling within the scope of the request.

Reasons for decision

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

10. Regulation 5(1) of the EIR requires a public authority that holds environmental information to make it available on request.
11. 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.
12. 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).
13. The complainant has told the Commissioner that the information she has been provided with is not the information she has requested and so is outside the scope of her request.
14. The council has explained to the Commissioner that it has provided the complainant with several documents, however, these documents do not provide the exact information requested. That being for "evidence to show developer compliance with Defra and Natural England Guidance (Oct 2014) for protected species in respect of Land South of Brookelands (Planning applications 16/01381/OUT and 20/01509)"
15. The council has stated that there is no actual 'evidence of compliance' held and although it needs to maintain accurate records of planning and related applications in order to deliver an effective planning service, 'evidence of compliance' is not something the council proactively monitors.
16. The council explained that it might investigate reactively from a complaint, but it has not received any complaints in relation to the subject matter of the complainant's request with sufficient information to trigger such an investigation.
17. With regards to searches carried out to determine if the information is held, the council has told the Commissioner that all of its planning records are held digitally by reference number within its document management system.

18. It says that its planning team manager has searched under the relevant planning reference and found no information falling within the scope of the request.
19. The council accepts that the information it disclosed to the complainant does not fall within the scope of the request, but states it provided this information to be of assistance to the complainant.

The Commissioner's decision

20. The Commissioner has reviewed the above submissions and explanations from the council. He acknowledges why the council provided the information it did, but agrees that this information provided is out of scope of the actual request.
21. With regards to the council's position that the information requested is not held, the Commissioner is satisfied that the council has searched in the most relevant areas for the information and accepts its explanation that it has not received any complaints relating to the subject matter of the request.
22. On this basis, the Commissioner finds that on the balance of probabilities, the council does not hold the requested information. The exception provided by regulation 12(4)(a) of the EIR is, therefore, engaged.

Regulation 12(1)(b) of the EIR - Public Interest Test

23. Regulation 12(1)(b) of the EIR requires a public interest test to be carried out if a request is refused under any of the exemptions set out under regulation 12 of the EIR.
24. However, as no information has been found to be held, the Commissioner can only find that the public interest in maintaining the exemption at 12(4)(a) of the EIR outweighs any public interest in disclosure, simply because there is no information to disclose.

Right of appeal

25. 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

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

26. 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.
27. 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