

**Freedom of Information Act 2000 (FOIA)  
Environmental Information Regulations 2004 (EIR)  
Decision notice**

**Date:** 6 December 2022

**Public Authority:** Stockport Metropolitan Borough Council  
**Address:** Town Hall  
Edward Street  
Stockport  
Cheshire  
SK1 3XE

**Decision (including any steps ordered)**

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1. The complainant has requested information relating to a particular planning application, including copies of objections to it. Stockport Metropolitan Borough Council ('SMBC') disclosed the information in response to the request. However, the complainant argued that SMBC should proactively publish comments and objections to individual planning applications on its website, and that by failing to do so, SMBC was not complying with its obligations under regulation 4 (Dissemination of environmental information) of the EIR.
2. The Commissioner's decision is that regulation 4 of the EIR does not require SMBC to proactively publish comments and objections to planning applications on its website. However, SMBC breached regulation 5(2) of the EIR by failing to comply with the request within 20 working days of receipt.
3. The Commissioner requires no steps.

## Background

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4. The complainant had been in correspondence with SMBC regarding a particular planning application, and he asked to see all comments and objections to it that had been submitted by members of the public. SMBC told him that the information was available on payment of a £19 administration fee. The complainant objected and argued that SMBC had a duty to proactively publish the information on its website, free of charge.
5. To test the lawfulness of SMBC's position, he proposed making an FOIA request for the information, and he asked SMBC to confirm that it would deal with such a request. He did not receive a response to that query.

## Request and response

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6. On 18 August 2021, the complainant wrote to SMBC and requested information in the following terms:

"I'm a bit disappointed not to have received a substantive reply to my email of 29 July 2021 (see the email chain below)

In the absence of a reply please will you treat this email as a formal Freedom of Information Act request for:

- All the objections to the planning application [reference number redacted]
  - The unredacted version of the applicant's statement
  - The precise date on which the redacted version of the applicant's statement was made available on the SMBC planning website."
7. SMBC responded to the request on 29 September 2021, disclosing the requested information, with redactions made to withhold personal data under section 40(2) (Personal information) of FOIA. It did not charge the complainant a fee for disclosing this information.
  8. The complainant then requested an internal review, on the following grounds:
    - He noted that he had received information under FOIA, free of charge, which, if requested from SMBC's planning department, would have incurred a substantial administration charge.

- He argued that he had merely received a transcript of the applicant's statement, and not the statement itself, which he believed may be different:

"As I am sure you would agree there is often a significant difference between a redacted version of a document and a transcript of an excerpt because the latter gives no indication of the amount of material that has been removed from view."
  - He said that although SMBC claimed the information was uploaded to its website on 14 June 2021, it was not until the week of 30 July 2021 that the information became accessible by the public.
  - He complained about the late response to his request for information, which had exceeded 20 working days.
9. SMBC responded on 9 November 2021. It recognised that it should have dealt with the request under the EIR, and not FOIA, as it was a request for information about planning matters.
10. It said that under the EIR, it was entitled to charge:

"...an appropriate fee for the provision of copies of environmental information and the charge quoted to you by the service on the 2nd June 2021 was the appropriate charge for the copies of the documents you requested. However, the service area on this occasion made the decision to provide the redacted comments to you free of charge, as a gesture of goodwill".
11. As regards the planning applicant's statement, it said that this had been disclosed to the complainant, verbatim. It disclosed a copy of the statement email sent by the applicant (with his email address redacted) so that the complainant could see that they were the same.
12. As regards the date the statement was uploaded to the website, SMBC confirmed that it was uploaded on 14 June 2021, but was marked 'sensitive':

"... it therefore did not appear on the public access version of the website. It is then likely that the officer realised this and unmarked it as sensitive, which is why it then appeared on the website later, sometime towards the end of July".

## Reasons for decision

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13. The Commissioner is satisfied that the request was for environmental information, as defined in regulation 2(1)(c) of the EIR, and therefore that it fell to be dealt with under the EIR.
14. SMBC publishes information on planning permission applications on its website. The information is updated on a weekly basis. While comments and objections to individual planning applications can be submitted via its website, it does not publish them online. Instead, its website states that they are available to view by contacting the Planning Department.
15. In his complaint to the Commissioner, the complainant expressed dissatisfaction with SMBC's refusal to proactively publish comments and objections to planning applications on its website. He argued that it had a duty under the EIR to do so, and that other local authorities do publish this information. He argued that SMBC should be required to:

"Change its policy so that it publishes all objections to all planning applications on its website on receipt (redacted as necessary)."
16. Public authorities are not obliged to proactively publish all the environmental information they hold. However, regulation 4(4)(a) of the EIR states that they must organise and publish, as a minimum, any information they hold that is listed in Article 7(2) of EU Directive 2003/4/EC. Public authorities must also organise and publish facts and analyses they consider "relevant and important" to "major environmental policy proposals" (regulation 4(4)(b)).
17. Regulation 4(1)(a) of the EIR, states that public authorities must:

"...progressively make the information available to the public by electronic means which are easily accessible..."
18. (These requirements are separate from the duty under regulation 5, to make information available in response to individual requests.)
19. The Commissioner's guidance on the proactive dissemination of information<sup>1</sup> lists the information specified in Article 7(2), so he will not list it again here. It includes, at point (b), "policies, plans and

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/2021/2619025/proactive-dissemination-of-information.pdf>

programmes relating to the environment". This means that local authorities must proactively publish information on planning applications (which SMBC does, on its website). However, the Commissioner is satisfied that the comments and objections that SMBC receives to individual planning applications are not covered by point (b), or by any other part of Article 7(2). He is also satisfied that this information does not, on its own, fall within the scope of regulation 4(4)(b) of the EIR.

20. The Commissioner recognises that some local authorities choose to publish objections to planning applications, and that the complainant would find it helpful for SMBC to do the same. However, as that information does not fall within the categories specified by way of regulations 4(4)(a) and (b) of the EIR, the Commissioner is satisfied that SMBC is not under any obligation to proactively publish it.
21. Accordingly, he finds no failure to comply with regulation 4 of the EIR.
22. As regards the complainant's concern about potentially being charged by the Planning Department to receive information which he could receive for free under the EIR, the Commissioner encourages public authorities to disclose environmental information free of charge, wherever possible. However, they may charge for environmental information; if they do, any charge must be "reasonable" and must not exceed the actual cost of supplying the information<sup>2</sup>.
23. The Commissioner understands that SMBC has referred the complainant to its schedule of charges for providing planning information, which is on its website.

### **Procedural matters**

24. The Commissioner notes that SMBC took 29 working days to respond to the request. This was a breach of regulation 5(2) of the EIR, which sets a time limit of 20 working days for complying with a request for information.
25. Furthermore, although SMBC received the request on 18 August 2021, on 9 September 2021, it told the complainant that he must re-submit it to its dedicated FOIA email inbox, which he duly did.

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<sup>2</sup> <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/charging-for-information-under-the-eir/>

26. The Commissioner is satisfied that the request of 18 August 2021 was a valid request for information, and that it should have been treated as such. SMBC should have transferred the request to the relevant business area itself and the complainant should not have been put to the trouble of re-submitting it. SMBC's attention is drawn to the Commissioner's guidance on this point, which states:

"We recommend you provide clear contact details for the person in your organisation who deals with requests for information, but you cannot ignore or refuse a request if it is not addressed to the relevant person."<sup>3</sup>

27. The Commissioner has made a record of these points for monitoring purposes.

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<sup>3</sup> <https://ico.org.uk/for-organisations/guide-to-the-environmental-information-regulations/receiving-a-request/>

## Right of appeal

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28. 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)

29. 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.

30. 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 .....**

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