

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 6 April 2022

Public Authority: Leeds City Council
Address: Civic Hall
Calverley Street
Leeds
LS1 1UR

Decision (including any steps ordered)

1. The complainant has requested information relating to a specific landowner.
2. Leeds City Council confirmed that it did not hold the requested information.
3. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold the requested information.
4. The Commissioner does not require the Council to take any further steps.

Background information

5. The complainant is concerned that specific trees, just off a public footpath, have become overgrown and unruly. On 6 August 2020 the complainant wrote to the Leeds City Council's ('the Council') Public Rights of Way (PRoW) manager stating:

"Whilst the trees may not have any obvious defects, I am sure you will agree that they are massively overgrown and that it is the owners (sic) responsibility to maintain them. Please provide me with the owners contact details so that I can take this up with them."

6. The Council dealt with this query under the normal course of business. The manager responded on 10 August 2020 and confirmed:

"Thank you for your email. As I'm sure you understand, data protection restrictions, specifically the GDPR, prevent the Council from providing the type of information requested."

Request and response

7. On 31 May 2021, the complainant wrote to the Council and requested the following information:

"Please provide contact details for who owns the land on [Redacted] so that they can be contacted to maintain the trees which are severely overgrown."

8. On 23 April 2021 the Council responded and stated that it did not hold the requested information. It advised the complainant to request this information from HM Land Registry.
9. The complainant forwarded to the Council their previous email exchange with the Public Rights of Way manager. The complainant was concerned that the Council had previously admitted to holding the requested information.
10. The complainant's concern was interpreted as a request for internal review and the outcome to this review was provided on 17 May 2021. The Council upheld its original position, confirming that it does not hold the requested information.

Scope of the case

11. The complainant contacted the Commissioner on 17 June 2021 to complain about the way that their request for information had been handled. The complainant believes, based on their correspondence with the Council in August 2020, that the information is held.
12. The Commissioner considers the scope of his investigation to be to determine whether, on the balance of probabilities, the Council is correct when it says it does not hold the requested information.
13. The Commissioner notes that this request was originally acknowledged under the Environmental Information Regulations 2004 ('EIR'). However, the refusal notice and internal review outcome were provided under the Freedom of Information Act 2000 ('FOIA'). The Council has

confirmed to the Commissioner that it should have been dealt with under the EIR.

Reasons for decision

Is the requested information environmental?

14. Regulation 2(1) of the EIR defines environmental information as information relating to:
 - '(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
 - (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
 - (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements.'
15. The Council has confirmed to the Commissioner that 'the request was logged and acknowledged as an EIR request on 12 April 2021. When a response was provided, however, this stated that it had been provided under the terms of the Freedom of Information Act. The internal review of this request was also processed as an FOI appeal.'
16. The Council confirmed that the request 'should have been processed as a request under the Environmental Information Regulations. This is on the basis that it concerned the ownership of land (and the maintenance of trees), which can reasonably be seen to fall under the definition of environmental information as defined by Regulation 2(1) of the EIR.' The Commissioner agrees, noting that the requested information would likely represent a 'measure' or 'activity' affecting the environment.
17. The Council has explained that it does not consider this error fundamentally changes the way in which it has handled this request, since it is of the opinion that it does not hold the requested information.

18. The Commissioner agrees to a certain extent. He notes that it is always important to ensure that requests for information are handled under the correct access regime. This is particularly important when refusing to provide information since the reasons why information can be withheld under FOIA (the exemptions) are different from the reasons why information can be withheld under the EIR (the exceptions). In addition, there are some procedural differences affecting how requests should be handled.

Regulation 5(1) – General right of access to information held

19. The Commissioner agrees that, whether the request was dealt with under FOIA or EIR would not have changed the content of the Council's submission. In cases where a dispute arises over the recorded information held by a public authority at the time of a request, the Commissioner, following the outcome of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities. This is the same whether a request is dealt with under FOIA or EIR.
20. This means that the Commissioner will determine whether it is more likely than not that the public authority held information relevant to the complainant's request at the time that the request was received. To clarify, the Commissioner is not expected to prove categorically whether or not the relevant information was held at the time of the request, he is only required to make a judgement on whether it is more likely than not that such information was held. The Commissioner is also not expected to consider or comment on whether the requested information **should** have been held at the time of the request.
21. The Commissioner asked the Council to provide explanations as to why the requested information was not held at the time that the request was received. The Commissioner also asked the Council to explain the searches it had undertaken to locate any information that would fall within the scope of this request and to explain why these searches would have been likely to locate the information. The Commissioner expects such searches to be reasonable and proportionate.
22. The Council has explained that the member of staff who initially dealt with the request contacted the Public Rights of Way ('PRoW') team.
23. The PRoW team confirmed that it keeps records of the existence and status of public rights of way. However, it does not hold any information on land ownership. The PRoW team confirmed that such information is held by HM Land Registry.
24. The Council has explained that, despite knowing there is no statutory requirement for it to hold this information, the PRoW team searched its

records and found no information within the scope of the request was held.

25. The Council has also explained that, when conducting the internal review into this matter, the reviewing member of staff contacted the PRoW team again. The PRoW team searched for the information for a second time and found no information within the scope of the request was held.
26. Returning to the complainant's previous correspondence with the PRoW team, the Council has stated it does not consider this correspondence implies that it holds any information on land ownership, rather that the type of information, personal data, requested could not be disclosed.

The Commissioner's view

27. The Commissioner is satisfied that, as the request concerns a public right of way, it was appropriate for the Council to liaise with its PRoW team to ascertain if the information was held. The PRoW team searched its systems, twice, and concluded that no such information was held.
28. The Council has also been able to explain to the Commissioner why the requested information is not held and the Commissioner is satisfied with this explanation. To reiterate, the Council keeps records of the existence and status of public rights of way. However, it does not hold any information on private land ownership. It does not seem that the request concerns land which makes up a public right of way, rather private land adjoining it. The Council has advised the complainant to contact Land Registry for further details.
29. Ultimately the Commissioner is satisfied that the Council has conducted adequate and targeted searches for the requested information. The Commissioner is satisfied that, on the balance of probabilities, the Council does not hold the requested information because it is not required to.

Other matters

30. The Council has acknowledged to the Commissioner that the complainant's original correspondence with the PRoW team 'should have been processed as a formal information request through the Information Management and Governance team.'
31. The Commissioner has not considered whether the Council was right to handle the complainant's original query under the normal course of business since the complainant has raised no concerns about this matter.

32. However, the Commissioner does note that, had the Council provided a response to this query under the EIR, it would have been obligated under regulation 5(1) to confirm to the complainant that the specific information they were requesting was not held.
33. Whilst handling the initial query under the normal course of business was valid, the Commissioner notes that it is the inconsistent manner in which these two requests have been handled which has led to the complainant's confusion and, ultimately, this complaint to the Commissioner. The Commissioner also notes that there may be circumstances in which personal data is disclosed in response to an EIR or FOIA request and it was inappropriate for the Council to imply that such information would never be disclosed.

Right of appeal

34. 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

35. 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.
36. 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

Alice Gradwell
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF