

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

**Decision notice**

**Date:** 31 March 2022

**Public Authority:** The Planning Inspectorate  
**Address:** 3H Hawk Wing  
Temple Quay House  
2 The Square  
Bristol  
BS1 6PN

**Decision (including any steps ordered)**

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1. The complainants submitted two requests for information held by the Planning Inspectorate (the Inspectorate) about a particular appeal decision.
2. The Commissioner is satisfied that the Inspectorate has, on the balance of probabilities, now provided the complainants with all the information held that is relevant to their two requests.
3. However, by failing to provide all the relevant information within the required timescales, the Commissioner has found that the Inspectorate has breached regulation 5(2) of the EIR, and section 10(1) of the FOIA.
4. Furthermore, the Inspectorate's failure to complete an internal review in respect of Request 1 within 40 working days is also a breach of regulation 11(4) of the EIR.
5. The Commissioner does not require the Inspectorate to take any steps as a result of this decision notice.

## Background

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6. The request relates to a dispute over the height of a group of trees that are located on the complainants' land, close to a common boundary with their neighbour. The neighbour complained to the local council about the impact that the trees were having on their property. The council determined that the group of trees constituted a 'High Hedge' within the meaning of the Anti-Social Behaviour Act 2003, and a remedial notice was issued requiring the complainants to reduce the height of the high hedge by a specified amount.
7. The neighbour was not satisfied with the terms of the council's remedial notice, believing that it fell short of what was required to remedy the problem, and they submitted an appeal to the Inspectorate. The complainants also had some issues with the council's decision, stating that it had been wrong to determine that the trees constituted a high hedge.
8. The Inspectorate determined that the trees did constitute a high hedge and explained the reasons for this decision. The Inspectorate also decided that the requirements of the council's remedial notice were reasonable, and the neighbour's appeal was dismissed.

## Request and response

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9. The complainants have raised concerns about the Inspectorate's handling of two information requests which they have made. Given the close connection between the two requests, both in terms of content and the issues to which they relate, the Commissioner has decided that it is appropriate to consider them within one decision notice.

### Request 1

10. On 6 May 2020, the complainant wrote to the Inspectorate and requested information in the following terms. The Inspectorate's response of 4 September 2020, follows each point of the complainant's request in bold:

*'1. Did [Inspector's name redacted] base her decision in "off the cuff" loose opinions or did she receive advice from and consult with the Planning Inspectorate and if so, what was that advice and on what was it based?*

**Inspectorate response: The reasoning, conclusions and judgements set out in the decision are entirely those of the Inspector alone. They are based solely on her professional**

***assessment of the evidence submitted during the appeal and her observations during her site visit. She received no advice regarding the decision at any point in the process.***

*2. Who gave that advice? Was the person(s) a qualified lawyer with previous high hedge experience.*

***Inspectorate Response: As the Inspector received no such advice, the question is academic.***

*3. What experience did [Inspector's name redacted] have of high hedge cases and high hedge (anti-social behaviour) law? How many such cases has she handled?*

***Inspectorate Response: The Inspector undertook training on High Hedge casework in 2016. This was her 6<sup>th</sup> case.***

*4. Are there any legal precedents [Inspector's name redacted] relied on and what are they and what is their relevance to this particular situation where none of the essential criteria for a high hedge as defined in the relevant legislation apply?*

***Inspectorate Response: The Inspector used no specific "legal precedents" in reaching her decision, other than the basic legislation covering such casework.***

*5. Was there any collusion with Allerdale Council in the decision process driven by the Council's desire to save face? It was noted she had separate meeting with the Council.*

***Inspectorate Response: No "collusion" or separate meetings took place between the Inspector and Allerdale Council officials.***

*6. How experienced is [Inspector's name redacted] as a planning inspector and how many total cases has she handled?*

***Inspectorate Response: The Inspector has seven years' experience as a Planning Inspector, during which time she has decided around 650 cases.***

*7. Was there any other supervision of the decision and if so by whom?*

***Inspectorate Response: No.***

*8. Why have you been so slow to reply?'*

***Inspectorate Response:*** The Inspectorate went on to provide a response to point 8 of the request which explained that its offices had been closed for a period during the COVID-19 pandemic, and it had

been unable to access hard copies of letters sent using the postal service.

11. The Inspectorate's response to the complainants also set out details of the remedial notice that had been issued to the complainant by Allerdale Council, and the subsequent appeal decision made by the Inspectorate.
12. In addition, the Inspectorate confirmed to the complainants that whilst they had cited the FOIA, and the Data Protection Act 2018 (the DPA 2018), in their correspondence of 6 May 2020, it regarded the points they had raised to be a series of questions that did not fall within the scope of either of these information access regimes. It stated that this was because such statute only covers recorded information that it holds; however, the Inspectorate went on to say that it was still happy to provide a response to the questions that had been raised by the complainant.
13. On the 14 September 2020, the complainant requested an internal review.
14. On 27 April 2021, the Inspectorate provided its internal review response. It confirmed that the complainant's correspondence of 6 May 2020, had now been considered under the FOIA, the EIR, and the DPA 2018.
15. The Inspectorate stated that although the relevant High Hedge appeal had been dismissed, it was clear that the complainants had concerns about the judgements reached; it went on to say that resolving such issues are essentially outside the remit of a request for recorded information under the FOIA, EIR and DPA 2018.
16. The Inspectorate advised the complainants that their means of resolving concerns with the lawfulness of the Inspector's decision were through legal challenge at the time that the decision was issued (in February 2019). The Inspectorate went on to say that its published complaints procedure also makes clear that it has no powers to reconsider judgements made by an Inspector, and that it does not investigate complaints made outside of one year from the issue of an appeal decision.
17. The Inspectorate went on to maintain its position with regards to its original response to each of the eight points of the complainants' request; however, it did provide some further explanations in relation to each point of the request, the remedial notice that had been issued by Allerdale Council, and also the Inspectorate's decision.

Request 2

18. In the complainant's correspondence to the Inspectorate of 14 September 2020, they disputed that their correspondence of 6 May 2020, had been a series of questions, rather than an information request, and went on to say:

*'On the Contrary I want to see copies of all the letters, emails, minutes of meetings and conversations, notes of telephone calls, text messages, telexes, faxes, all references relating to this matter held by the Planning Inspectorate in both its internal considerations and procedures and with Allerdale Borough Council. These need to be both before the decision notice and after together with clear written statement the Planning Inspectorate has provided all relevant records it holds to me.'*

19. Later in the same correspondence, the complainant went on to ask the following:

*Whether the Planning Inspectorate is aware of the Government Guidelines, has copies of such Guidelines, what instructions it has issued to its Inspectors re adherence to the Guidelines and why they have not been adhered to in this case.*

20. The Inspectorate's internal review response dated 27 April 2021, confirmed that it had considered the complainant's correspondence of 14 September 2020, to contain a new request for information (those parts quoted in paragraphs 18 and 19 of this decision notice). The Inspectorate went on to provide its response to Request 2.
21. With regard to the first part of Request 2, the Inspectorate advised the complainants that it was to provide the relevant information held as a 'single disclosure', i.e. it was a disclosure of information directly to the complainant which did not distinguish between the DPA 2018, the FOIA and the EIR.
22. The Inspectorate went on to say that the only information which had been withheld that was relevant to the request was that which was regarded to be the personal data of third parties, and where a disclosure would breach the data protection principle of fair, lawful and transparent processing. It also advised that the redaction of this limited information should not otherwise compromise understanding the wider contents of the documents.
23. The Inspectorate also confirmed that the hard copy of the appeal file that formed the record for the relevant appeal was no longer held; it stated that it had been destroyed as the twelve month retention period for holding such information (following the date of the decision) had already passed.

24. However, the Inspectorate did confirm that some duplicate information regarding the case was held within an electronic file which had not yet been deleted, and it provided this information to the complainant. It went on to clarify that any response it provided was restricted to the remaining information that was held.
25. With regard to part 2 of Request 2, the Inspectorate stated that the complainant had not specified the guidelines which they were referring to. However, it went on to provide further details of legislation, guidance and a training manual which it believed may have been what the complainant required.
26. The Inspectorate also advised the complainant that it does not hold any recorded information as to why the 'guidelines' had not been adhered to in this case. It reiterated the explanations previously given that the Inspectorate's decision notice provides both the decision and reasoning, and that in the absence of a successful legal challenge, that decision stands as the lawful decision for the High Hedge appeal.
27. The Inspectorate did advise the complainants of their right to an internal review of its response to Request 2. However, it stated that in the circumstances of this case it would, if the complainants preferred, and if the Commissioner was also willing, agree to the waiving of an internal review so that any concerns which the complainant may have could be considered as one single complaint.

### **Scope of the case**

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28. The complainants first contacted the Commissioner to raise concerns about the council's handling of Request 1 on 11 February 2021. They then subsequently raised concerns about the Inspectorate's handling of Request 2.
29. Following receipt of the Commissioner's full letter of investigation, the Inspectorate carried out a review, and on 25 February 2022, it issued a further response to the complainant in respect of Request 2.
30. The Inspectorate confirmed that a fresh search of its records had identified a series of additional communications which had not been included within the information sent to the complainants on 27 April 2021. It provided this information, with some minor redactions (names and contact details of third parties).
31. The Inspectorate also referred to the details it had previously provided about the relevant guidance, guidelines and training manuals that it held. It confirmed to the complainants that it had found some additional

documents/publications, and it also provided further explanations about how the Inspectors make their decisions.

32. The Inspectorate also confirmed that it was to withhold an email which it received after the appeal decision was made, and also its response to this email, under regulation 13(1) and regulation 12(5)(d) of the EIR. It explained that this correspondence concerned a procedural matter relating to the upheld remedial notice, and had no bearing or impact on the decision itself.
33. The Commissioner has noted that the withheld correspondence which the Inspectorate has provided for his consideration postdates the complainants' two requests. Therefore, whilst the Inspectorate's arguments for withholding this information do not appear to be unreasonable, he regards this information to fall outside the scope of both of the requests. As a result, the Commissioner does not intend to consider this information further within this decision notice.
34. The Commissioner is mindful that some of the information that has been requested is likely to be the personal data of the complainants. This is because the decision that was reached has had some impact on them and their land.
35. The Commissioner is also satisfied that whilst some of the requested information is environmental, within the definition at regulation 2(1) of the EIR<sup>1</sup>, since it is information on 'the state of the elements of the environment' (regulation 2(1)(a)), and/or information on 'measures affecting the elements of the environment' (regulation 2(1)(c)), certain other information is subject to the FOIA.
36. For example, certain information held about the decisions made regarding the relevant trees may be environmental information. However, the information requested about the policies, procedures and guidance used by the Inspectorate to assist in the decision making process, how a decision is reached by an Inspector, and the specific details about one officer and their professional experience is information that, in the Commissioner's opinion, falls within the scope of the FOIA, and not the EIR.
37. The complainants' primary concern, as far as the Commissioner can determine, is that documents and information which they believe should be held by the Inspectorate, have not been provided in response to their requests.

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<sup>1</sup> <https://www.legislation.gov.uk/ukxi/2004/3391/regulation/2>

38. In this particular case, the Inspectorate decided to take a more holistic approach to the requests, providing a broad single response that considered, but did not make a distinction, between the FOIA, EIR and the DPA 2018. It is the Commissioner's intention to take a similar approach; this is because, in his opinion, it would not serve any useful purpose to any party to conduct a full analysis of each part of the two requests to determine what information falls within the scope of each of the three information access regimes.
39. The Commissioner also regards it to be relevant to note that the complainants have not raised any concerns about the redactions (which consist of names and contact details) within the information that has been released by the Inspectorate.
40. Given all of the above, the Commissioner's analysis will cover the following:
  - Whether the Inspectorate was correct to have considered the complainants' correspondence of 6 May 2020, and 14 September 2020, as two requests for information.
  - Whether the Inspectorate has identified all the information that is held that is relevant to the request(s), and has provided this to the complainants.
  - Certain procedural matters.

## **Reasons for decision**

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### **Did the complainants make two separate requests for information?**

41. The complainants argued that their correspondence of 14 September 2020, was not a new request for information; it was only intended to clarify why their correspondence of 6 May 2020, should have been considered as a request for information, and what they actually required.
42. The Inspectorate confirmed in its internal review response of 27 April 2021, that it had now reconsidered the complainant's correspondence of 6 May 2020, under the FOIA, the EIR, and the DPA 2018. As the internal review is an opportunity for a public authority to revise its position, and correct any errors within its original response, the Commissioner does not have any concerns in this regard.
43. Furthermore, it is the Commissioner's decision that whilst there is some overlap between the two requests, the Inspectorate was correct to



consider part of the complainant's correspondence of 14 September 2020, as a new request for information because it specified information that had not been requested by the complainants in their earlier correspondence.

## **Regulation 5(1) of the EIR– duty to make environmental information available on request**

### **Section 1 of the FOIA– General right of access**

44. Regulation 5(1) of the EIR states that 'a public authority that holds environmental information shall make it available on request.' This is subject to any exceptions that may apply.
45. Section 1(1) of FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds that information and, if so, to have that information communicated to them.
46. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. The Commissioner will also consider the actions taken by the authority to check that the information is not held, and any other reasons offered by the public authority to explain why the information is not held.
47. The Commissioner will also consider any reason why it is inherently likely or unlikely that information is not held.
48. The Inspectorate has confirmed in its most recent correspondence to the complainants, and to the Commissioner, that it accepts that it originally failed to identify all the information that was held that was relevant to Request 2.
49. The Inspectorate has advised that as part of the most recent searches carried out, staff who were involved with the appeal also searched their own records for any information that may have relevance to the requests, and this identified some additional information. The Inspectorate has said that it would appear that these searches were not conducted previously, and confirms that lessons have been learned from this for future cases.
50. The Inspectorate has also confirmed that the electronic case file that is held was re-examined carefully to ensure that nothing had been missed during the previous disclosure.

51. The Commissioner is satisfied that the recent searches conducted by the Inspectorate are reasonable and proportionate, and that, on the balance of probabilities, all the information that is held that is relevant to both the requests has now been identified.
52. The Inspectorate's previous notification that the physical file for the appeal had already been destroyed had been of particular concern to the complainants. They believed that this information should have been retained, and that the Inspectorate should have been in a position to provide this information in response to their requests.
53. The Inspectorate has confirmed that the physical file for the relevant appeal was destroyed on 29 January 2020. It has also confirmed that the default retention period for casework files is for one year after the decision itself. It states that, in this instance, the file was destroyed slightly early (within days of reaching one year from the decision date of 7 February 2019), but before the complainants had first written to the Inspectorate on 26 March 2020.
54. Whilst the complainants have raised concerns that the physical file is no longer held, the Commissioner accepts that there was no statutory duty for the Inspectorate to have held such information by the time that it received Request 1 or Request 2.
55. The Commissioner notes that the complainants have repeatedly raised concerns that they have still not been provided with an answer to their question about what constitutes a high hedge, what legal precedents exist or were relied on, and if the Inspectorate failed to take proper legal advice when forming a decision. However, as the Inspectorate has explained to the complainants on several occasions, these are not requests for recorded information, and any issues which they may have had about the decisions that were reached in 2019 should have been raised via the appropriate channels.
56. As the Commissioner is satisfied that, on the balance of probabilities, the Inspectorate has provided all the information held that is relevant to both Request 1 and Request 2, the Inspectorate is not required to take any further steps as a result of this decision notice.

## **Procedural matters**

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57. The Commissioner has considered the timeliness of the Inspectorate's responses under the FOIA, and the EIR.
58. Regulation 5(2) of the EIR provides that in response to information requests under the EIR, information shall be made available as soon as

possible, and no later than 20 working days after the date of receipt of the request.

59. The Inspectorate's responses to Request 1, and Request 2, were much later than the statutory 20 working days. The Commissioner therefore concludes that the council failed to comply with the requirements of Regulation 5(2), in that it did not disclose the information within 20 working days of receiving the requests for information.
60. Regulation 11(4) of the EIR requires a public authority to complete its internal review as soon as possible, and no later than 40 working days after the internal review is requested. The Inspectorate failed to provide its internal review response to Request 1 within this timeframe, and as such, has breached regulation 11(4) of the EIR.
61. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and 'not later than the twentieth working day following the date of receipt'.
62. The Commissioner finds that the Inspectorate breached section 10(1) of the FOIA by failing to respond to Request 1, and Request 2, within 20 working days.
63. In this case, the Inspectorate experienced some issues with regard to the receipt of the complainants' correspondence, and this led to significant delays in its response times. The complainants sent their correspondence by post during a time when the Inspectorate's offices were closed due to the Covid-19 pandemic.
64. Whilst the Commissioner has recorded the procedural breaches in this notice, his view is that the primary reason these came about was due to issues relating to the receipt of hard copy post by the Inspectorate at a time when its office was closed due to the pandemic. He does not regard these breaches as evidence of systemic problems within the Inspectorate's request handling.

## Right of appeal

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65. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

66. 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.
67. 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 .....**

**Suzanne McKay**  
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**Information Commissioner's Office**  
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