

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 4 January 2023

Public Authority: Epping Forest District Council
Address: Civic Offices
323 High Street
Epping
CM16 4BZ

Decision

1. The complainant requested information from Epping Forest District Council ("the Council") relating to a specific planning application.
2. The Commissioner's decision is that the Council has failed to demonstrate that regulation 12(4)(b) (manifestly unreasonable request) is engaged and therefore, the Council is not entitled to rely on this exception.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - The Council must issue a fresh response to the request that does not rely on regulation 12(4)(b) of the EIR.
4. The Council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

Request and response

5. The complainant made the following information request to the Council on 29 November 2021 (numbering added by the Commissioner):

"... with regard to application [reference redacted], ...

[1] I can find no reference on the application documents on the Council's website to the consultant's appointment or report. This was clearly a background document to the decision and should have been published, in my view, under the Information Regulations 2012, and should be made available now as part of the response to my EIR 2004 request. Can a copy be provided please?

[2] It also appears that the decision to recommend to be taken at the delegated decision level was made by [name redacted] as a verbal instruction to the Case Officer, as recorded by the emails provided, but with no other record or minute supplied, unless there was one, but it appears this has not been provided either.

Again if there is such a document or documents can these also be made available, please?"

6. The Council responded on 8 March 2022 and denied holding a copy of the consultant's report requested in part 1 of the request. The Council also refused to provide the complainant with information within the scope of part 2 of the request stating that all the background papers held that relate to the consultant's report have already been disclosed to the complainant in response to a previous request for information.
7. On 9 March 2022, the complainant requested an internal review. The Council provided the complainant with the outcome of its internal review on 14 March 2022 in which it stated that it does not hold information within the scope of the request.
8. The Council provided the complainant with a further response to their request on 6 May 2022. The Council amended its position stating that it was now relying on section 14 (vexatious or repeated request) of the Freedom of Information Act 2000 (FOIA) to refuse to comply with the request.

Reasons for decision

9. Whilst the Council has handled the request under the FOIA, as the complainant has requested information relating to a planning application, the Commissioner considers that the requested information is likely to be environmental. Therefore, the Council should have handled the request under the EIR.
10. The Commissioner has therefore considered whether the Council is entitled to rely on regulation 12(4)(b) (manifestly unreasonable) of the EIR to refuse to comply with the request. Regulation 12(4)(b) of the EIR is equivalent to section 14 of the FOIA.
11. The complainant does not consider their request to be vexatious. Whilst the complainant accepts that they made repeated requests for the same information, in their complaint to the Commissioner, the complainant stated that they had to ask for the same information multiple times as the Council did not respond to their requests.
12. Furthermore, whilst the Council has stated that it does not hold a copy of the consultant's report requested in part 1 of the request, the complainant considers that the Council could obtain a copy of the report from the consultant. The complainant also believes that the Council could easily locate information within the scope of part 2 of their request.
13. The Council considers the request to be vexatious and repeated. In its response of 6 May 2022, the Council explained that it has spent an extensive amount of time corresponding both in writing and by phone with the complainant in an attempt to satisfy their request for information. The Council stated that it has repeatedly told the complainant that it does not hold information within the scope of the request.
14. The Council explained that the consultant's report, requested in part 1 of the request, was generated using an M3 computer system. When a new report is created on this system, the old report is superseded with the updated version. Therefore, the requested consultant's report is no longer held as it has been replaced by an updated version. The Council explained that it has conducted an extensive search for the requested consultant report in case the report had been moved from the M3 computer system and saved as a Word Document. However, the report was not located.
15. The Council did not explain the searches it has undertaken for information within the scope of part 2 of the request or explain why it does not hold this information.

16. During the course of his investigation, the Commissioner offered the Council the opportunity to provide him with further information to support its position. Specifically, the Commissioner asked the Council to provide him with evidence that it has repeatedly told the complainant that it does not hold information within the scope of the request. However, by the date of this notice, the Commissioner had not received any submissions from the Council.
17. As the Council has not provided the Commissioner with further information to support its position, he considers that the Council has failed to demonstrate that the request is manifestly unreasonable. Therefore, his decision is that regulation 12(4)(b) is not engaged. The Council is now required to provide the complainant with a fresh response which does not rely on regulation 12(4)(b) of the EIR.

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: 0300 1234504

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

Ben Tomes
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF