

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 February 2023

Public Authority: Oxford City Council
Address: Town Hall
St Aldate's
Oxford
OX1 1BX

Decision (including any steps ordered)

1. The complainant requested from Oxford City Council ("the Council") information relating to the potential development of a site.
2. The Commissioner's decision is that the information requested is environmental and therefore the Council should have dealt with the request under the Environmental Information Regulations 2004 ("the EIR") and not the FOIA.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Reconsider and respond to the complainant's request dated 10 February 2022 under 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 the Act and may be dealt with as a contempt of court.

Request and response

5. On 10 February 2022, the complainant wrote to the Council and requested information in the following terms:

I would like to make a follow up FOI on this matter.

Could you please let me know the following:

- 1. Has the agreement referred to below been finalised and signed?*
 - 2. Who initially approached whom, as between Cantay Estates and Oxford City Housing Development, in relation to the development of the Dominion Oils site, now the subject of the agreement referred to below, and on what date?*
 - 3. Which party initiated the agreement (ie prepared the first draft) referred to below, and when was it sent?*
6. The Council responded on 7 March 2022. It stated that information was withheld under section 43(2).
7. Following an internal review the Council wrote to the complainant on 23 March 2022. It maintained the application of section 43(2).

Scope of the case

8. The complainant contacted the Commissioner on 23 March 2022 to complain about the way their request for information had been handled, and specifically that the Council was not entitled to withhold information under section 43(2).
9. The Information Commissioner's Office ("the ICO") subsequently wrote to the Council to request its arguments for the applied exemption.
10. The Council subsequently advised the ICO that it had handled the request under the wrong legislation, and should have done so under the EIR.

Reasons for decision

Is the requested information 'environmental'?

11. Regulation 2(1) of the EIR defines 'environmental information' as any information in any material form on:

(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) and (b) as well as measures or activities designed to protect those elements;

(d) reports on the implementation of environmental legislation;

(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and

(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c).

12. The Commissioner considers that the phrase "any information...on" should be interpreted widely in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact. In the Commissioner's opinion a broad interpretation of this phrase will usually include information concerning, about or relating to the measure, activity, factor, etc. in question. In other words, information that would inform the public about the matter under consideration and would therefore facilitate effective participation by the public in environmental decision making is likely to be environmental information.

13. In the circumstances of this case, the Council has indicated to the Commissioner that it should have handled the request under the terms of the EIR.
14. The Commissioner has reviewed the request and agrees with the Council that it can be categorised as environmental information under regulation 2.
15. As the information is environmental, it is excluded from consideration under the FOIA by virtue of section 39. The Commissioner therefore requires the Council to reconsider the complainant's request under the EIR.

Right of appeal

16. 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

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

17. 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.
18. 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

Daniel Perry
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
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