

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 24 January 2023

Public Authority: Worcestershire County Council

Address: County Hall
Spetchley Road
Worcester
WR5 2NP

Decision (including any steps ordered)

1. The complainant requested information with regards to planning applications. Worcestershire County Council (the council) provided information to the complainant.
2. The Commissioner's decision is that the council holds further information falling within the scope of the request and therefore regulation 12(4)(a) of the EIR is not engaged.
3. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the complainant either providing the further located information, identified in paragraph 17 and 18 below, or issue a valid refusal notice in accordance with 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. On 1 February 2022 the complainant made the following information request:

“Under FoI and EIR Legislation could you provide me with a copy of all information held, in whatever form, including draft documentation, in respect of Planning Applications for [address redacted]: [planning applications redacted] please. Can you also include any archaeological documentation and correspondence and any other information on applications which pertain to this site please. Could you also ensure that the search includes all correspondence between officers, members and external bodies. If anything is identified but not provided can this be stated, with an explanation for withholding please.”

6. The council responded on 2 February 2022 stating that no information was held. It advised that the information may be available from Wychavon District Council.
7. The complainant requested an internal review as he considered that the council “does have information in respect of these Planning Applications as both Highways and Archaeology have provided information to Wychavon District Council.”
8. The council carried out its internal review on 10 March 2022 finding that the request should have been considered under the EIR and advised that it will reconsider the request.
9. Having not received an internal review outcome, the complainant contacted the Commissioner on 9 May 2022, dissatisfied with the council’s handling of his request.
10. The Commissioner wrote to the council on 26 May 2022 stating that the council needs to conduct an appropriate internal review in accordance with the EIR.
11. The council carried out an internal review on 1 June 2022 providing the complainant with information and a link to the Historic and Environment Record where archaeological reports relating to the local area can be requested.

Scope of the case

12. The complainant contacted the Commissioner further as he considered the council to hold further information than what has been provided.
13. The scope of the case is for the Commissioner to determine whether the council has provided all the information it holds within the scope of the request.

Reasons for decision

Regulation 12(4)(a) of the EIR – Information held/ not held

14. Regulation 5(1) of the EIR requires a public authority that holds environmental information to make it available on request.
15. Regulation 12(4)(a) of the EIR allows a public authority to refuse to provide the requested information if it does not hold it at the time of the request being received.
16. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).
17. The complainant has told the Commissioner the further information he would have expected to be provided with is communications between a specified official within the council and their manager and others about planning applications for the specific planning references.
18. Following searches made, during the Commissioner's investigation, the council told the Commissioner that it has located correspondence that falls within this description. It has also stated to the Commissioner that it would consider this information to be exempt from disclosure.
19. The Commissioner is satisfied that this information would fall within the part of the complainant's request asking "... Could you also ensure that the search includes all correspondence between officers, members and external bodies."
20. On this basis the Commissioner finds that as the council does hold further information falling within the scope of the request, regulation 12(4)(a) of the EIR is not engaged.

21. The Commissioner requires the council to issue a fresh response to the complainant either providing the further located information or issue a valid refusal notice in accordance with the EIR.

Right of appeal

22. 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

23. 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.
24. 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