

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 15 June 2023

Public Authority: Wiltshire Council

Address: County Hall
Bythesea Road
Trowbridge
Wiltshire
BA14 8JQ

Decision

1. The complainant requested information from Wiltshire Council ("the Council") The Council stated that it did not hold any information in scope of the request.
2. Having considered the application of regulation 12(4)(a) – information not held – which has similarities to section 1(1) of FOIA, he is satisfied that, on the balance of probabilities, at the time of the request the Council did not hold the information requested by the complainant.

Request and response

3. The complainant made a request on 26 August 2021 in the following terms:-

"Wiltshire Council owns the Freehold on numerous commercial industrial units. Some have been sold on long leaseholds. How many leaseholders have applied for a variation of the lease to allow change of use and how many granted? How many leaseholders have applied for a variation of the lease to permit sub-letting and how many granted? What have the council charged in each identified case and what is the basis of the charge levied? Who in the council deals with these matters?"

4. The Council responded to the complainant on 13 September 2021, stating that it could not provide the requested information and citing section 12 of FOIA. It asked the complainant to consider narrowing or refining his request.

5. On 13 September 2021 the complainant refined his request to the following:-

"I would be grateful if you will limit the enquiry to eighteen properties on the basis of your estimate of one hour-per property - subject to variation if time actually exceeds or is less than expected. Such enquiries to include all long leasehold commercial/industrial properties at Pound Barton, Sutton Veny and thereafter for those nearest to that location."

6. On 24 September 2021 the Council responded to the complainant, providing some information in response to his request. At that stage it had begun handling the complainant's request under the EIR as the requested information was environmental in nature. In respect of the remainder it cited section 12(4)(a) of the EIR as it stated it did not hold any further information within the scope of the complainant's request.

7. The complainant did seek an internal review of the Council's response on 11 August 2022, on the basis that the Council had allegedly provided some information to the court in respect of a court case, which it had informed the complainant it did not hold. However, the Council responded stating that the review request was out of time under regulation 11 of the EIR. The Commissioner has accepted the complaint for investigation.

Reasons for decision

8. The Commissioner has considered whether the Council is correct when it states that it did not hold the information the complainant requested.
9. The Commissioner considers that the Council has set out, in its submissions to him, a plausible explanation as to why would not have held the remaining information that has been requested. The submissions state that, other than those listed in the information disclosed to the complainant, no leaseholders relevant to the complainant's request had requested variations in their leases, therefore there would be no reason for the Council to hold information about this other than a record of 'zero returns,' , i.e. no information held on record.
10. The Commissioner is therefore satisfied that, on the balance of probabilities, the Council did not hold the remaining requested information at the time of the request. Although the complainant asserts that the Council provided some information to the court which it had informed the complainant it did not hold, this was subsequent to the date of the request and the Council's original response. The Commissioner is only concerned whether any further information within the scope of the complainant's request was held, i.e. on record, at the time of the request. It is not within the Commissioner's remit to judge whether the information held on record is up to date and accurate, only whether it was held at the time of the request and, from the Council's submissions, he is satisfied that it was not.

Other matters

11. The Commissioner further notes that the Council has acknowledged the complainant's assertion that a Senior Solicitor submitted information to court which conflicted with what was disclosed to the complainant at the time of the request. The Council has asked the solicitor to contact the complainant separately regarding this, and this is therefore outwith the remit of the EIR.

Right of appeal

12. 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

13. 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.
14. 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

Deirdre Collins
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF