

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 9 February 2023

Public Authority: Telford & Wrekin Council
Address: Darby House
Lawn Central
Telford
TF3 4JA

Decision (including any steps ordered)

1. The complainant requested from Telford & Wrekin Council information in relation to a number of planning applications. Telford & Wrekin Council disclosed some of the requested information but withheld the remainder under Regulations 12(4)(e), 12(5)(f) and 13 of the EIR. Following the Commissioner's intervention, Telford & Wrekin Council disclosed information previously redacted and withheld.
2. The Commissioner's decision is that Telford & Wrekin Council breached Regulations 5(1) and 5(2) of the EIR by failing to respond to the initial request within 20 working days and by failing to provide all the information it held. Telford & Wrekin Council also breached Regulation 14(2) of the EIR by failing to issue a refusal notice within 20 working days.
3. The Commissioner does not require Telford & Wrekin Council to take any steps to ensure compliance with the legislation.

Request and response

4. On 28 July 2022 the complainant wrote to Telford & Wrekin Council (the Council) and requested information in the following terms:
"Under the freedom of information act could I request the following information in regards to both (redated) and (redacted) – (redacted)."

1) Firstly, site of, or a copy of, all the planning applications submitted to Planning or any other member of the planning dept in regards to the above.

2) Copies of any correspondence, letters/ emails between the applicant and any officer within the planning dept or T&W legal, Also any correspondence between the planning department and legal in respect of the applications (redacted) & (redacted) or property address (redacted).

3) Any information that the applicant requested 'pre planning advice' before submitting their application and copies of any relevant documents, letters or emails.

4) Any advice given by the planning dept/officer whether it would succeed and/or what they needed to do in regards to both (redacted) & (redacted).

5) Any information regarding who the 'care' company (redacted) is registered with? Is the care provider registered with T&W and could you supply any documents relating to this".

5. The Council responded on 6 September 2022. It addressed each of the complainant's questions in turn.

Q1. As the information requested was publicly available and easily acceptable on its website the Council stated it was applying Regulation 6(1)(b) of the EIR.

Q2. First part: correspondence between the applicant and the planning department. The Council disclosed the requested information with some redactions for personal data under Regulation 12(3) and 13 of the EIR.

Second part: correspondence between the planning department and the legal department. The Council withheld this information in its entirety under Regulation 12(4)(e) of the EIR (internal communications).

Q3. The Council withheld all pre-planning advice information in its entirety under Regulation 12(5)(f) of the EIR (adverse affect on a person who discloses information voluntarily).

Q4. The Council stated the requested information had been disclosed in response to Q2 above.

- Q5. The Council stated it did not hold any recorded information falling within the scope of this question.
6. As the complainant was dissatisfied with the Council's response, he requested an internal review on 12 September 2022 stating there was no mention or information disclosed on its decision making and findings in relation to the planning application.
 7. Following an internal review, the Council wrote to the complainant on 21 September 2022. It upheld its original decision and provided details of the public interest arguments considered. However, it did not list separate public interest arguments for each of the EIR exceptions cited. Furthermore, the Council did not specifically address the concerns raised by the complainant in his initial and internal review requests.

Scope of the case

8. The complainant contacted the Commissioner on a number of occasions in September 2022 to complain about the way his request for information had been handled. In particular, he said he was unhappy with the Council's decision to withhold 'critical information regarding communications between their internal departments and the decisions taken as to the granting of the application'. The complainant added that the Council's decision and thought process for the decision it made 'needs to be fully transparent...to prove that due diligence was undertaken'.
9. The Commissioner contacted the Council on a number of occasions to request copies of the redacted and withheld information together with details of the searches and enquiries it carried out and any further arguments it wished to advance in respect of the EIR exceptions raised.
10. The Council provided the Commissioner with copies of the withheld information and confirmed that it was relying on the EIR exemptions under Regulations 12(4)(e), 12(5)(f) and 13.
11. Following further discussions with the Commissioner the Council agreed to disclose information previously redacted to the complainant in satisfaction of his request. However, the complainant expressed his concern and dissatisfaction that this information was not disclosed at the outset in response to his request or following the internal review. He stated this late disclosure had prejudiced his position to fully

engage in the planning process and advance any comments and concerns he had regarding the planning application.

12. The Scope of the Commissioner's investigation will be to assess the adequacy and timeliness of the Council's response to the complainant's request under the EIR.

Reasons for decision

Regulations 5(1) and 5(2) of the EIR

13. Regulation 5(1) of the EIR states that: "a public authority that holds environmental information shall make it available on request."
14. Regulation 5(2) of the EIR states that: "information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request."
15. As the Council did not provide the complainant with the information sought within 20 working days, the Commissioner finds that it breached Regulation 5(2) of the EIR.

Regulation 14(2) of the EIR

16. Regulation 14(2) requires that the authority should issue a refusal as soon as possible and no later than 20 working days after the date of receipt of the request.
17. In this case, the Council issued a refusal notice citing the exceptions it was relying upon in excess of 20 working days after the complainant submitted his request thereby breaching Regulation 14(2) of the EIR.
18. As explained above, the Council has now disclosed the previously redacted information to the complainant. Therefore, the Commissioner does not require any steps to be taken.

Other matters

19. The Commissioner would like to draw the Council's attention to his guidance regarding public authorities' obligations under the EIR when responding to and refusing a request for environmental information¹.

¹ <https://ico.org.uk/for-organisations/guide-to-the-environmental-information-regulations/what-are-the-eir/#7>

Right of appeal

20. 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

21. 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.
22. 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

**Laura Tomkinson
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**