

Environmental Information Regulation 2004 (EIR)

Decision notice

Date: 24 January 2023

Public Authority: Spelthorne Borough Council
Address: Knowle Green
Staines-upon-Thames
TW18 1XB

Decision

1. The Commissioner's decision is that Spelthorne Borough Council ("the Council") should have considered the request in this case under the EIR rather than FOIA.
2. The Commissioner requires the Council to take the following step to ensure compliance with the legislation:
 - Issue the complainant with a fresh response to their request that complies with the EIR.
3. The Council must take this step 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

4. The complainant made the following information request to the Council on 16 September 2022:

"Please provide me with recorded information and all documentation regarding the application of TPO277/2022.
In accordance with the definition of recorded information I require all

- official documentation, any drafts, emails, notes or any other information held in this matter to include: -
1. The Councillor's request for the TPO.
 2. The referral to the Council's Tree Officer
 3. A copy of the tree evaluation method for Preservation Order Assessment.
 4. A copy of the recommendation
 5. The assessment of trees and the notes of the meeting of the Development Management team.
 6. The address list of the people served.
5. The Council's final position was that the requested information was exempt from disclosure under section 40(2) of FOIA, which concerns personal data.

Reasons for decision

6. This reasoning covers why the requested information is environmental information that the Council should have considered under the EIR.
7. Regulation 2(1) of the EIR describes environmental information as being information 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)...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);

8. The requested information in this case is associated with Tree Preservation Orders. This therefore concerns measures likely to affect land.
9. The Commissioner is therefore satisfied that this information falls within scope of the EIR and is environmental information. The Council should therefore have handled the request under the EIR and not FOIA.

Right of appeal

10. 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

11. 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.
12. 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

Michael Lea
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF