

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 3 April 2023

Public Authority: Gateshead Council
Address: Civic Centre
Regent Street
Gateshead
NE8 1HH

Decision (including any steps ordered)

1. The complainant requested information relating to a report about a lighting column.
2. The Commissioner's decision is that on the balance of probabilities, the Council does not hold information within the scope of the request and therefore, regulation 12(4)(a) (information not held) of the EIR is engaged.
3. However, he also finds that the Council breached regulation 11 (reconsideration) of the EIR by failing to provide the complainant with the outcome of its internal review within 40 working days.
4. The Commissioner does not require the Council to take any steps.

Request and response

5. The complainant made the following information request to the Council on 30 October 2022:

"In February 2022 you sent an email report to [name redacted] in relation to the siting of a lighting column outside my home.

Under the FOI Act could you please inform me as to whether or not this is a clear and concise factual report or based on assumptions only."

6. The Council responded on 9 November 2022 and denied holding information within the scope of the request.
7. On 9 November 2022, the complainant wrote to the Council to complain about its response to the request. The complainant asked the Council to clarify whether it held information within the scope of the request.
8. The Council responded on 11 November 2022 and stated that it does not hold information within the scope of the request. On the same date, the complainant wrote to the Council to complain about its response to the request.
9. The Council provided the complainant with the outcome of its internal review on 16 February 2023. It stated that, as the complainant has requested environmental information, it should have handled the request under the EIR rather than FOIA. The Council informed the complainant that it was now relying on regulation 12(4)(a) (information not held) of the EIR to refuse the request.

Reasons for decision

Regulation 12(4)(a) – information not held

10. This reasoning covers whether the Council is correct when it says that it does not hold information within the scope of the request and therefore is entitled to rely on regulation 12(4)(a) to refuse the request.
11. The complainant considers the Council to hold information within the scope of the request. In their complaint to the Commissioner, the complainant stated that they submitted their request for information directly to the individual who wrote the report referred to in the request as that individual should have been able to provide them with a yes or no response to the request.

12. The complainant believes that the Council would not need to formulate new information in order to respond to the request as the requested information should have been created by the individual who wrote the report when it was being written. The complainant therefore considers that the requested information is held by the Council.
13. The Council's position is that it does not hold information within the scope of the request. In its submissions to the Commissioner, the Council explained that the report referred to in the request consists of an email sent by an engineer to the Local Government Ombudsman (LGO) as part of an investigation into a complaint made by the complainant.
14. The Council explained that whilst it holds a copy of the report, it does not hold any information which records whether the report is a "clear and concise factual report or based on assumptions only". It stated that the report itself does not outline how it was created and whilst the LGO's decision report refers to the opinion and view of the individual who wrote the report, the LGO's decision does not directly answer the request.
15. The Council explained that it has consulted the individual who wrote the report and has asked them whether they hold any information within the scope of the request. The individual has confirmed that when writing the report, the only note they made was a sketch of the lighting column. This sketch does not record whether the report is a clear and concise factual report or based on assumptions, and therefore they do not hold any information within the scope of the request. The individual who wrote the report however, did state that when writing the report they reviewed photographs of the lighting column and undertook various calculations.
16. The Council stated, as it does not hold information within the scope of the request, in order to establish whether the report is a factual report or based on assumptions, it would have to ask the individual who wrote to the report. The Council considers that this would be creating new information, which it is not required to do under the EIR.
17. The Commissioner considers that the Council has conducted adequate searches for information held within the scope of the request. The Commissioner notes that, whilst the individual who wrote the report may be able to answer the questions raised in the request, this would involve the creation of new information, which the Council is not obliged to do in order to respond to a request under the EIR.
18. Based on the evidence available to him, the Commissioner's decision is that, on the balance of probabilities, the Council does not hold

information within the scope of the request and so the exception provided by regulation 12(4)(a) is engaged.

19. As no information within the scope of the request is held, the Commissioner can only find that the public interest in maintaining the exception at 12(4)(a) of the EIR outweighs any public interest in disclosure, simply because there is no information to disclose.

Regulation 11 – reconsideration (internal review)

20. Regulation 11 of the EIR states that:

“(3) The public authority shall on receipt of the representations and free of charge—

(a) consider them and any supporting evidence produced by the applicant; and

(b) decide if it has complied with the requirement.

(4) A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the date of receipt of the representations.”

21. The complainant wrote to the Council on 11 November 2022 to complain about its response to the request. In its submissions to the Commissioner, the Council explained that it did not initially consider the complainant’s email of 11 November 2022 to be a request for an internal review, as in this email the complainant stated the following:

“I have no intention of going through anymore Council timewasting measures so I will not be contacting a senior officer as you suggest.”

22. The Council explained that, as it had informed the complainant in its initial response to the request that they could request an internal review by contacting a senior officer, it interpreted the above statement as meaning that the complainant did not wish to request an internal review. The Council therefore did not conduct an internal review until the Commissioner instructed it to do so.

23. The Commissioner accepts that, in isolation, the above statement could be interpreted as meaning the complainant did not want to request an internal review. However, he notes that the complainant also stated in the same email that they were expecting a response from the Council within 20 working days. He therefore considers the complainant’s email of 11 November 2022 to constitute a request for an internal review.

24. Furthermore, the Commissioner understands that on 16 November 2022, the Council wrote to the complainant to inform them that an internal review would be conducted. This suggests to the Commissioner that the Council also considered the complainant's email of 11 November 2022 to be a request for an internal review.
25. As the Council did not provide the outcome of its internal review until 16 February 2023, the Commissioner's decision is that the Council breached regulation 11 of the EIR by failing to conduct an internal review within 40 working days.

Right of appeal

26. 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

27. 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.
28. 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

Joanne Edwards
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF