

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 11 August 2023

Public Authority: Darlington Borough Council
Address: Town Hall
Darlington
DL1 5QT

Decision (including any steps ordered)

1. The complainant has requested from Darlington Borough Council (DBC) any recorded information it holds regarding pre planning agreements, applications, notes and correspondence with Darlington Football Club (DFC) related to the potential sites where DFC proposes to build a New stadium.
2. The Commissioner's decision is that, on the balance of probabilities, DBC does not hold any information in relation to the request and has correctly applied regulation 12(4)(a) but that it failed to carry out an internal review within the statutory time limit and breached regulation 11(4) of EIR.
3. The Commissioner does not require any further steps to be taken.

Request and response

4. On 7 November 2022, the complainant wrote to DBC and requested information regarding Darlington Football Club (DFC) in the following terms:

“(Name redacted), chairman/CEO of Darlington Football Club (DFC), held a public presentation in the Dolphin Centre on the 22.07.22 where he discussed the two sites the club is considering to build a new stadium. Since this presentation it has come to light that the two locations are Skerningham and Faverdale/Burtree. I wish to request the following information:

1. Details of the Agreement In Principle for planning the Council has given DFC for both sites, so Skerningham and Faverdale/Burtree.
 2. Copies of all emails between DFC and the Council’s Planning Department, (name(s) redacted) and the Tees Valley Mayor in connection with Skerningham and Faverdale/Burtree being potential sites
 3. Dates of the meetings the Council held with DFC and dates the Tees Valley Mayor attended and for what reason.”
5. DBC responded on 14 November 2022. It stated that it held no information falling within the scope of the request for questions 1 and 2 and stated the following with regards to question 3:

“There have been two meetings to date 07/07/22 at Teesside International Airport attended by (names redacted). DFC outlined their desire to move and highlighted two potential sites. No papers were made available. Second meeting 11th October 2022 in at DBS attended by (names redacted). DFC once again outlined their desire to move and highlighted two potential sites. No papers were made available.”

6. On 14 November 2022, the complainant requested an Internal review.
7. On 28 November 2022, the complainant provided further context to DBC as follows:

“I am unhappy about DBC saying it holds no recorded information falling within the scope of my request for my first two points. I believe DBC will hold some information in order to provide me with answers to those points.

I am also not satisfied that no papers were made available for the two meetings disclosed to me in my third point. Were there emails exchanged about the meetings between DBC, DFC and the Tees Valley Mayor, agendas produced or minutes taken?”

8. Following an internal review DBC wrote to the complainant on 14 March 2023 and upheld its position.

Scope of the case

9. The complainant contacted the Commissioner on 04 May 2023 to complain about the way their request for information had been handled as they believed that DBC held more recorded information in relation to the progress of planning applications for two proposed sites to build a new football stadium for DFC, particularly as officials from DBC attended two meetings with DFC to discuss this matter.
10. The Commissioner considers that the scope of the complaint is to determine, on the balance of probabilities, if DBC holds further information in relation to the request. It will also consider the time which DBC took to provide an internal review to the complainant.
11. The Commissioner has determined that he has sufficient evidence to make a decision, without having to contact DBC for further representations.

Reasons for decision

[Would] Is the requested information [be] environmental?

12. Regulation 2(1) of the EIR defines 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);
13. The requested information concerns a request for all recorded planning agreements or applications information including; meeting minutes, notes and emails. The Commissioner believes that the requested information is likely to be information on a measure as per Reg 2(1) (c) which would affect (or be likely to affect) the elements of the environment. For procedural reasons, he has therefore assessed this case under the EIR.
 14. 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).
 15. Regulation 12(4)(a) of the EIR states that a public authority may refuse to disclose information "to the extent that it does not hold that information when an applicant's request is received". The Commissioner is not expected to prove categorically whether the information is held.
 16. In this case, the complainant has stated that they believe that DBC holds more information within the scope of the request particularly as the relocation of DFC has been an ongoing issue for several years and is nearing planning-application stage. Additionally, at a public meeting last year, the CEO of DFC stated that the football club was allocated two sites by the council who would ultimately make a final decision on the matter. Additionally, the complainant states it as implausible that no recorded information, emails or minutes exist pertaining to the proposed relocation of DFC and two recent meetings between DBC and DFC.
 17. In its internal review response to the complainant, DBC stated that adequate and appropriate searches had been conducted in order to locate any information on its systems. It had conducted a search of the email accounts and electronic filing system of officers named in the request as well as the Head of Planning using key words to identify

relevant documents but no further information was located. DBC confirmed that all information would be stored electronically and would not be held by any other teams. No planning applications had yet been received at the time of the request.

18. DBC stated that it was unable to ascertain whether any recorded information such as emails were ever held or held but deleted prior to the request being received as there is no requirement for officers to retain emails of a general nature or retain them on the basis that it may receive a request for it at a later date. Any emails of a general nature may have been deleted as part of normal email management rather than by a formal destruction process.
19. Additionally, DBC confirmed that as their officers attended the two meetings as guests at the request of DFC, they did not take any meeting minutes and that they were not sent an agenda.
20. In the circumstances, the Commissioner accepts that on a balance of probabilities that the public authority did not hold the information for the purposes of the EIR and it was therefore correct to rely on regulation 12(4)(a).

Public interest test

21. Technically regulation 12(4)(a) contains a public interest test – however the Commissioner cannot conceive of a public interest argument that would require a public authority to disclose information that it did not hold.

Procedural matters

Regulation 11 – internal review.

22. Regulation 11 of the EIR covers public authorities' obligations in relation to the carrying out of internal reviews of the handling of requests for information.
23. In essence, any expression of dissatisfaction with the handling of a request an authority receives should be treated as a request for an internal review. There is no obligation for requesters to submit their review request via any specific procedure provided by authorities in this regard.
24. Regulation 11(4) requires authorities to provide an internal review decision within 40 working days of the date of receipt of a request for review. In this case the complainant submitted their review request on

14 November 2022 but the council did not carry out a formal review until 14 March 2023.

25. The Commissioner has, therefore, concluded that DBC has failed to comply with regulation 11(4) in this case.

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

Amie Murray
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