

**Freedom of Information Act 2000 (FOIA)**  
**Environmental Information Regulations 2004 (EIR)**  
**Decision notice**

**Date:** 4 December 2023

**Public Authority:** Wirral Council  
**Address:** PO Box 290  
Brighton Street  
Wallasey  
Wirral  
CH27 9FQ

**Decision (including any steps ordered)**

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1. The complainant requested information from Wirral Council (“the Council”) relating to a proposal to develop a new market in Birkenhead. During the course of the Commissioner’s investigation the Council disclosed the information it had previously withheld, however, the complainant also believes that the Council holds further information within the scope of part 7 of the request which it has not disclosed, the Council denies this.
2. The Commissioner’s decision is that on the balance of probabilities, the Council does not hold further information within the scope of part 7 of the request, beyond that which has been disclosed.
3. The Commissioner does not require the Council to take any further steps.

## Request and response

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4. The complainant made a 21 part request for information to the Council on 8 March 2023 and a further request (which the Council treated as part 22 of the request) on 22 March 2023. The parts of the request relevant to this case were as follows:

Part 7: "A Birkenhead town centre ground plan used to create the 3D images widely used in the public consultation documents."

Part 22: "Copies of all the Future High Street Fund monitoring data submitted by WBC to National Government since the beginning of the new market project."

5. The Council responded on 31 March 2023. It stated that the information requested in part 7 of the request had been provided to the complainant previously on 8 March 2023 and that the information requested in part 22 of the request was commercially sensitive.
6. The complainant requested an internal review on 3 April 2023.
7. Following an internal review the Council wrote to the complainant on 9 June 2023. It stated that it had responded to part 7 of the request on 11 April 2023 and that it was withholding the information requested in part 22 of the request under section 43(2) of FOIA (commercial interests).

## Scope of the case

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8. The complainant contacted the Commissioner to complain about the way their request for information had been handled. Specifically, they believe the Council holds further information within the scope of part 7 of the request which it has not disclosed and they didn't believe the Council was entitled to rely on section 43(2) to withhold the information requested in part 22 of the request. The scope of this case was therefore to consider how the Council has handled these two parts of the request.
9. The Commissioner considers that the information requested in both parts 7 and 22 of the request is environmental information as defined in regulation 2(1) of the EIR.
10. During the course of the Commissioner's investigation he asked the Council to reconsider part 22 of the request under the EIR. The Council subsequently disclosed the information requested in part 22 of the request, that it had previously withheld under section 43(2) of FOIA.

11. This decision notice therefore considers only whether the Council holds further information within the scope of part 7 of the request which it has not disclosed.
12. As the Council's position is that it does not hold the information in part 7 of the request it wasn't necessary for the Commissioner to ask it to reconsider this part of the request under the EIR. The Council had already provided the relevant information to the Commissioner required for him to reach a decision under regulation 5(1) of the EIR as to whether, on the balance of probabilities, the Council holds further information within the scope of this part of the request.

## Reasons for decision

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### **Regulation 5(1) – duty to provide environmental information upon request**

13. Regulation 5(1) of the EIR states that "a public authority that holds environmental information shall make it available on request." This is subject to any exceptions that might apply.
14. In this case, although the Council has disclosed a number of different ground plans, the complainant believes it holds further information within the scope of part 7 of the request as, "WBC have consistently sent the wrong ground plan".
15. The Council's position is that it has disclosed all information held, within scope of part 7 of the request. It states that it has provided various documents to the complainant in its attempt to provide the information the complainant is seeking. Specifically, it stated:

"On 11<sup>th</sup> April 2023 we emailed the complainant the boards/imagery of the Birkenhead Town Centre/St Werburgh's masterplans used for consultation events in December 2022 and January 2023. One of the files contains a total of 9 'ground plans' one of which we would suggest forms the basis of the 3D imagery referred to by the complainant.

On 6<sup>th</sup> June 2023 we provided a schedule of all plans considered by the Council since 2021. This entailed a total of 95 projects.

In addition we also provided a copy of the Birkenhead Market Feasibility Report (a 40 page technical feasibility document)."

16. In addition the Council added, "Consultation materials were produced by Building Design Partnership (BDP) who are leading on the St Werburgh's

masterplan. The requester may want to contact BDP separately to enquire about the availability of 'ground plans'. BDP has not provided the Council with copies of all of its working documents..."

17. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner must decide whether on the balance of probabilities a public authority holds any further information which falls within the scope of the request (or was held at the time of the request).
18. During the course of his investigation the Commissioner asked the Council to provide details of the searches it had carried out to identify any further information held within the scope of part 7 of the request.
19. The Council provided the following information as to the searches it has carried out:

"This area of work/responsibility sits with the Council's Birkenhead Town Centre Regeneration Delivery Team who form part of the Council's Planning & Regeneration Directorate. Upon notification of the complaint, the Head of Regeneration Delivery forwarded the circulated the issue to members of the Birkenhead Town Centre Regeneration Delivery Team. The team consists of three Regeneration Managers. The Regeneration Managers with an involvement/responsibility for Birkenhead Town Centre Masterplan then undertook the following actions;

- I. Reviewed emails to identify the appropriate 'ground plan';
- II. Reviewed the programme/project management filing system in an effort to identify the appropriate 'ground plan';
- III. Reviewed the relevant area of the Council's 'Sharepoint' system in an effort to identify the appropriate 'ground plan'.
- IV. Reviewed their laptop hard drives (local drives) in an effort to identify the appropriate 'ground plan'.

The Council operates an electronic document retention/filing structure. No paper/hard copies are kept.

The above filing structures contain a series of folders and sub-folders which relate to specific programmes and drill down to individual projects such as Birkenhead Town Centre Masterplan. 'Ground plans' relating to the masterplan would logically be stored within this folder."

20. In addition the Council confirmed that the following search terms were used to search relevant email accounts: "Birkenhead Town Centre Masterplan", "Birkenhead Town Centre", "Birkenhead Market", "Masterplan", "Town Centre" and "Town Centre Regeneration".
21. The Commissioner is satisfied that the Council has carried out appropriate searches and staff consultations designed to identify any further information held within the scope of the request. As no information was identified, his decision is therefore that, on the balance of probabilities, the Council does not hold any further information within the scope of the request.

## Right of appeal

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22. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

23. 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.
24. 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 .....**

**Victoria James  
Senior Case Officer  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**