

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 12 October 2023

Public Authority: Cambridge City Council
Address: The Guildhall
Cambridge
CB2 3QJ

Decision (including any steps ordered)

1. The complainant has requested information regarding a potential feasibility study and instructions for work to be undertaken from Cambridge City Council ('the Council').
2. The Commissioner's decision is that, on the balance of probabilities, the Council holds additional information within the scope of the request.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation:
 - Disclose the additional information discussed at paragraph 20 of this notice or provide an appropriate refusal notice.
4. The public authority must take these steps 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

5. On 3 April 2023, the complainant wrote to the Council and requested information in the following terms:

1. "We note that the presentation document from the ELG meeting on 16/3 makes reference to "BPTW", with various page number references (for example, the bottom of page 10 of your document refers to "17//BPTW/Ekin Road Design Development"). It appears to us that these extracts were taken from some larger document(s). Please treat this part of our letter to you as a formal FOI/EIR request for the full document or documents from which these pages were taken (pages 5-10 of your document of 16/3).
2. Please treat this part of our letter to you as a formal FOI/EIR request for copies of all documents to be provided relating to any feasibility analysis that has been commissioned, commenced, or completed with respect to the Council's investigations of options for the Ekin estate regeneration.
3. Please also confirm whether these feasibility studies will be carried out internally by the Council, or externally by outside consultants, and if external consultants please confirm their identity and provide a copy of the instructions sent to them.
4. Please treat this part of our letter to you as a formal FOI/EIR request for copies of appendices A-D of the Millward report named above"
6. The Council responded on 28 April 2023. It stated that the requested information was exempt from disclosure under sections 21, sections 22 and sections 43 of the Freedom of Information Act 2000 (FOIA).
7. The complainant requested an internal review on 29 April 2023, for the questions labelled as 2 and 3 above. Following an internal review, the Council wrote to the complainant on 31 May 2023. It revised its response, stating the information should have been considered under the EIR and FOIA.
8. The Council also provided some additional information in its internal review, but explained the remaining information was being withheld under section 12, section 22, regulation 12(4)(d), section 43 and regulation 12(5)(e).

Scope of the case

9. The complainant contacted the Commissioner on 8 July 2023 to complain about the way their request for information had been handled.

10. The complainant advised they were satisfied with the response for question 2 and only wanted the Commissioner to investigate the response for question 3.
11. The Commissioner contacted the Council and asked it to clarify whether it believed the requested information for question 3 fell under FOIA or EIR, as it had cited similar exemptions/exceptions from both legislations to withhold information.
12. The Council confirmed on 30 August 2023 that the request for information did in fact fall under the EIR.
13. Since the complaint was brought to the Commissioner, the Council has published the information it stated it had originally withheld¹. The complainant did not agree that all the requested information had since been published.
14. The Commissioner considers the scope of his investigation to be whether, on the balance of probabilities, the Council holds more information within the scope of the request.

Reasons for decision

Is the requested information environmental?

15. 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

¹ [Redevelopment-Options-Visual-Guide-February-2023.pdf \(ekinroad.co.uk\)](#) & [Cambridge City Council \(ekinroad.co.uk\)](#)

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);
16. As the requested information relates to potential land development options, the Commissioner believes that the requested information is information on measures which affect or will likely affect the elements of the environment. For procedural reasons, he has therefore assessed this case under the EIR.

Regulation 5 – duty to make environmental information available on request

17. Under regulation 5(1) of the EIR, a public authority must make environmental information available on request if it holds the information and it is not subject to an exception.
18. Where there is a dispute between a public authority and a complainant as to whether all requested information falling within the scope of a request has been provided to the complainant, the Commissioner, following the lead of a number of First-tier Tribunal decisions, must decide the matter based on the civil standard of the balance of probabilities.
19. The complainant explained to the Commissioner that they would expect the Council to hold a document, or a series of documents authored by it and sent to the consultant giving them instructions on the project.
20. The Council provided the Commissioner with a further document which set out the provision of deliverables and formed the contract framework. Whilst the Commissioner acknowledges that some of the information contained on the website reflects information within the document, the website does not contain all of the information contained within the document.

21. Based on the above the Commissioner is satisfied that on the balance of probabilities the Council holds additional information within the scope of the request. The Commissioner requires the Council to disclose the requested information or provide a relevant refusal notice.

Right of appeal

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

Website: 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

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