

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

Date: 3 January 2024

Public Authority: Meopham Parish Council
Address: St Johns Centre
Wrotham Road
Kent
SA13 0AA

Decision (including any steps ordered)

1. The complainant requested details of four sites which Meopham Parish Council (the Council) had received in response to its call for sites for affordable housing. The Council initially refused the request under section 36 (prejudice to the effective conduct of public affairs) of the FOIA. In its internal review the Council maintained that section 36 applied to the information requested but stated that it also considered section 40(2) (personal data) and section 41 (information provided in confidence) to apply to the request.
2. The Commissioner's decision is that the requested information is environmental information within the definition at regulation 2(1)(c) of the EIR. The request should, therefore, have been handled under the EIR rather than the FOIA.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Reconsider the request under the provisions of the EIR and issue a fresh response to the complainant.
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 24 April 2023, the complainant wrote to the Council and requested information in the following terms:

"I would be grateful if you could let me know the four sites discussed at your 21 March full council meeting regarding your call for sites.

I note that only one site (No 1 Culverstone) may be pursued at this stage".

6. On 27 April 2023 the complainant wrote to the Council again. They referred to their earlier email dated 24 April 2023 and requested information in the following terms:

"I would be glad if you could supply the requested information as well as the responses that you have received from the English Rural Housing Association in respect of each site".

7. The Council responded on 16 May 2023 and stated that the information requested was exempt under section 36(2)(b)(ii) and 36(2)(c) of the FOIA. The Council also confirmed that no site from the four referred to in the minutes was currently being progressed any further.

8. On 30 May 2023 the complainant requested an internal review of the Council's refusal to provide the information.

9. The Council provided the outcome of its internal review on 14 June 2023 and upheld its position that section 36(2)(b)(ii) and (c) applied to the information requested. It stated that it considered section 40(2) and 41 of the FOIA to also apply to the information.

Scope of the case

10. The complainant contacted the Commissioner on 6 September 2023 to complain about the way their request for information had been handled.
11. This decision notice covers whether the request for information has been correctly handled, including whether or not the information is environmental.

Reasons for decision

Regulation 2(1) – definition of environmental information

12. Regulation 2(1) of the EIR provides the following definition of environmental information:

“...any information in written, visual, aural, electronic or any other material form 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) and (b) as well as measures or activities designed to protect those elements...”

13. It is important to ensure that requests for information are handled under the correct access regime. This is particularly important when refusing to provide information, since the reasons why information can be withheld under FOIA (the exemptions) are different from the reasons why information can be withheld under the EIR (the exceptions). In addition, there are some procedural differences affecting how requests should be handled.

14. The Commissioner has produced guidance¹ to assist public authorities and applicants in identifying environmental information. The Commissioner’s well-established view is that public authorities should adopt a broad interpretation of environmental information, in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact.

¹ <https://ico.org.uk/for-organisations/guide-to-the-environmental-information-regulations/>

15. The information requested relates to details of sites which were submitted to the Council for consideration for development of affordable housing. It is the Commissioner's view that the withheld information is integral to a measure (the funding for, and plans to, redevelop land) which will, or will be likely to, affect the environment.
16. Therefore, the Commissioner considers that the request is for environmental information, and that the EIR is the appropriate access regime.
17. The Commissioner orders the Council to issue a fresh response to the complainant's requests of 24 and 27 April 2023 under the provisions of the EIR. In so doing the Council should fully reconsider the requests, ensuring it correctly identifies the information falling within their scope. The Council should then either disclose the information held relevant to the requests, or issue a valid refusal notice which complies with regulation 14 of the EIR, confirming what exception(s) it considers applicable, and details of its public interest test considerations, where appropriate.
18. Further information on the Council's obligations under the EIR can be found on the Commissioner's website, including the Guide to the EIR², the EIR exceptions³ and the public interest test⁴.

Other matters

19. Although they do not form part of this notice the Commissioner wishes to highlight the following matters of concern.
 20. The Commissioner is disappointed with the lack of engagement on the part of the Council in this case.
 21. Despite sending a number of letters and emails to the Council regarding this complaint and leaving a number of phone messages asking the Council to contact him regarding this complaint, he has received no
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² <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/guide-to-the-environmental-information-regulations/>

³ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/#exceptions>

⁴ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/how-exceptions-and-the-public-interest-test-work-in-the-environmental-information-regulations/>

response to his enquiries. In his initial letter to the Council the Commissioner explained that, in his view, the request falls to be considered under the EIR as opposed to the FOIA.

22. The Council's lack of engagement and lack of input to the Commissioner's investigation has necessitated this decision notice being issued. Had the Council responded to the Commissioner's enquiries, there may have been no need for the Commissioner to issue this decision notice.
23. The Commissioner considers the Council's engagement with his office on this case to have been unacceptably poor and he expects to see improvements when any future complaints are allocated for investigation. In future the Commissioner expects the Council to provide him with satisfactory responses within the timeframes set in his correspondence.
24. The above issue will be logged and used by the Commissioner when considering the overall compliance of the Council.
25. The Commissioner will use intelligence gathered from individual cases to inform his insight and compliance function. This will align with the goal in his draft Openness by design strategy to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA and EIR enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in his Regulatory Action Policy⁵.

⁵ <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

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