

Environmental Information Regulations 2004

Decision Notice

Date 27 March 2007

Public Authority: Nottingham City Council
Address: The Guildhall
Burton Street
Nottingham
NG1 4BT

Summary

The complainant wrote to Nottingham City Council (the "Council") on 11 February, 21 March and 23 October 2005 requesting information relating to the relocation of Blenheim Lane allotments to a new site. The Commissioner's decision in this matter is that the Council's responses to the complainant's requests failed to comply with regulation 5 (time for compliance), regulation 14 (refusal to disclose) and regulation 7 in extending the time to respond to the requests on the basis of the complexity of its consideration of the public interest test under the Environmental Regulations 2004 ("EIR"). The Commissioner has decided that the Council correctly applied regulation 13 in refusing to provide to the complainant information about the individual compensation awarded to named allotment holders. The Commissioner has ordered the Council to respond to the outstanding aspects of the complainant's requests for information dated 11 February, 21 March and 23 October 2005 by clearly confirming or denying what information it holds and providing information to which he is entitled or indicating the basis on which the information is exempt from disclosure in accordance with its obligations under regulation 14.

The Commissioner's Role

1. The EIR were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR.

The Request

2. Owing to the various elements of the requests for information made by the complainant, and for the purpose of clarity, this Decision Notice identifies separately each letter requesting information. The relevant information requests are listed in full in the Requests Annex appended to this Decision Notice and the elements of each request have been labelled alphabetically (a)-(n) for ease of reference. The relevant legislation is stated in the Legal Annex appended to this Decision Notice.

The request contained in a letter dated 11 February 2005

3. On 11 February 2005 the complainant asked for details concerning the:
 - sale of allotment land and the relocation of allotments to a new site;
 - associated decision making processes within the Council; and
 - compensation amounts awarded to individual allotment holders.
4. The Council responded to the complainant on 15 March 2005, stating that the requests would be handled under the EIR.
5. The Council's letter dated 15 March 2005 stated that, in relation to request (f), information regarding the names of individual allotment holders is exempt under regulation 13 pertaining to personal data. The Council did however provide the complainant with the total amount of compensation awarded to all allotment holders.
6. In response to the other requests contained in the letter dated 11 February 2005, the Council stated that: "...owing to you making a number of requests for various pieces of information within this letter, the response will be complex. We are therefore extending the time available to us to respond to you on these issues under paragraph 7 of the legislation."
7. The Council's letter dated 15 March 2005 stated the complainant's rights to seek internal review and to complain to the Commissioner.
8. On 7 April 2005 the Council wrote to the complainant to inform him of a further delay in responding to him, citing section 17(2) of the Freedom of Information Act 2000 and claiming that the extension of time was to allow it to consider the public interest test.
9. On 27 May 2005 the Council replied to the complainant's outstanding requests of 11 February 2005, which are listed in the Requests Annex appended to this Decision Notice as (a) - (e) and (g) - (j).
10. On 30 May 2005 the complainant wrote with his comments in response to the Council's letter and received a reply from the Council dated 3

June 2005. The Council issued a further holding reply and apology for the delay on 20 July 2005, issuing a full response on 3 August 2005. The Council's letter expressed the view that most of the complainant's letter dated 30 May 2005 contained statements rather than enquiries. The Commissioner concurs with this view.

11. On 12 August 2005 the complainant again wrote to the Council to communicate his dissatisfaction with the responses he had received to his requests under freedom of information legislation. The Council responded with a holding letter to the complainant dated 22 August 2005.

The request contained in a letter dated 21 March 2005

12. In a letter dated 21 March 2005 the complainant requested information regarding financial matters connected with the relocation of the allotments. Please refer to (k), (l) and (m) in the Requests Annex appended to this Decision Notice. This request was made direct to the Council's Audit department and was largely treated as separate from the complainant's earlier request of 11 February 2005. The Council made a partial response and issued a holding reply on 24 March 2005 but there was no further response.

The request contained in a letter dated 23 October 2005

13. The complainant made a further request for information to the Council dated 23 October 2005 concerning damages paid to a named individual. Again, please refer to (n) in the Requests Annex appended to this Decision Notice.

The Investigation

Scope of the case concerning the requests dated 11 February, 21 March and 23 October 2005

14. The complainant wrote to the Commissioner on 19 March and on 25 September 2005 to complain about the Council's responses to all his information requests made to date.
15. On 19 March 2005 the complainant contacted the Commissioner to complain about the way his requests for information dated 11 February 2005 had been handled. The complainant specifically asked the Commissioner to consider the following points:
 - the delay by the Council in responding to requests for information he had made over the past two years
 - the Council's references in its letters to different legislation; and
 - the refusal by the Council of his request for the compensation figures paid to individual allotment holders.

16. On 25 September 2005 the complainant wrote again to the Commissioner and specifically asked him to consider the following points in relation to his requests dated 11 February and 21 March 2005:
 - the Council's refusal to provide to him the names of individual allotment holders and the compensation amounts they received
 - the Council's failure to respond to his letter dated 12 August 2005 within 20 working days of receipt. That letter did not contain a new request for information but was in pursuit of a response to FOI requests the complainant considered outstanding.
17. The Commissioner wrote to the complainant on 12 May 2005 in order to advise him that the Commissioner is not obliged to accept a complaint where the complainant has not exhausted the public authority's internal review procedure.
18. Despite repeated requests made by the Commissioner, the complainant did not confirm whether or not he had ever formally requested an internal review by the Council and no copy of any such request has been produced. In reviewing the numerous letters sent by the complainant to the Council, in the Commissioner's view it is clear that the complainant was not satisfied with the Council's responses. Moreover in its letter dated 13 December 2005, the Council referred to the complainant's "appeal", thus indicating that the Council accepted that the complainant's previous letter qualified as a request for a review. However, in view of the Commissioner's continuing concerns, on 31 January 2006 the Commissioner formally requested that the Council review its refusal to provide the complainant with information in relation to individual compensation received by allotment holders.
19. In a letter dated 31 January 2006 the Commissioner wrote to the complainant in order to clarify the elements of the complaint which fell outside the scope of the EIR and as such would not form part of the Commissioner's decision. The Commissioner is satisfied that the remaining information falls within the provisions of regulation 2(1)(c) of the EIR.
20. In this case the Commissioner has therefore investigated the following issues:
 - procedural breaches by the Council, in particular delays in responding to the complainant under regulation 5 and including extensions of time claimed by the Council under regulation 7;
 - the Council's refusal notices under regulation 14;
 - the Council's application of exceptions under the EIR, including refusal to provide information under regulation 13 (personal data).
21. The Council responded to requests (f) and (g), which had been made

prior to 1 January 2005, and therefore the Commissioner has treated these requests as valid requests under the EIR from 11 February 2005 when the complainant reminded the Council of his earlier requests.

Chronology of the case concerning the requests dated 11 February, 21 March and 23 October 2005.

22. The Commissioner wrote to the Council on 19 October 2005 to investigate its failure to write to the complainant further to its holding letter of 22 August 2005. No response was received and therefore the Commissioner wrote again on 14 November 2005. The Council replied on 15 November 2005, explaining its responses and apologising for the delay which it attributed to “the extraordinary number of requests” and “the serious resource issue in handling requests within the authority”.
23. The complainant had written again to the Council on 28 September and 23 October 2005 to chase up its response and to make a number of criticisms about the delay and about the sale of the allotments.
24. The complainant also made a further request for information on 23 October 2005.
25. The Commissioner wrote to the Council on 28 November 2005 to seek a response to the complainant’s outstanding requests for information. No response was received and the Commissioner therefore sent a further letter dated 19 December 2005.
26. In the meantime, the Council had written to the complainant on 13 December 2005. That letter sought to explain that it was dealing with the complainant’s requests for information under the EIR. The Council repeated its assertion that the individual compensation amounts requested were “exempt from disclosure under regulation 13 of Environmental Information Regulations 2004”.
27. The complainant informed the Commissioner on 6 January 2006 that he remained dissatisfied.
28. On 31 January 2006 the Commissioner asked the Council to undertake an internal review of its refusal to provide details of the individual compensation amounts. The Commissioner also wrote a detailed letter to the complainant analysing his complaints and explaining the scope of the Act and of the EIR. That letter also explained that the Commissioner had asked the Council to review its refusal notice in respect of the compensation amounts.
29. The complainant continued to correspond with the Commissioner about his requests, including a number of unanswered information requests he had made to the Council on 21 March 2005.
30. The Council did not respond to the Commissioner’s letter of 31 January

2006 and therefore the Commissioner wrote again on 13 February and 28 February 2006 as well as telephoning the Council. In his letter dated 28 February 2006, the Commissioner warned that failure to respond by a specified deadline would lead the Commissioner to consider issuing an Information Notice under regulation 18 of the EIR, which would require the Council to provide the Commissioner with the information requested in his letter to the Council of 31 January 2006.

31. The Council wrote to the complainant on 2 March 2006 with the outcome of its internal review. It confirmed its refusal to provide the individual compensation details, stating that this information is “excepted under Regulation 13 of the Environmental Information Regulations 2004”. The Council apologised for delays in responding to the complainant’s correspondence and acknowledged that it had failed to comply with the time limits set out in the EIR.
32. On 28 March 2006 the Commissioner requested that the Council supply a copy of the withheld information regarding compensation amounts in order to assess the exception claimed. This letter stated that consideration would be given to issuing an Information Notice in the event of non-compliance by a specified date.
33. The Council made no response, so on 12 April 2006 the Commissioner issued a letter containing a final warning. On 13 April 2006 the Council phoned the Commissioner to inform it that the letter of 28 March 2006 had been misdirected and that it would reply as soon as possible.
34. The withheld information was provided to the Commissioner on 19 April 2006.
35. The complainant continued to correspond with the Commissioner, expressing concern about the compensation awarded and the total number of allotments listed by the Council, a total which he considered did not correspond to the actual number of allotments on the site.
36. The Commissioner considered the application of the personal data exception to the individual compensation amounts and determined that the Council had correctly applied the exception. The Commissioner wrote with the outcome of his deliberations to the complainant and to the Council on 16 May 2006.
37. Despite many months of correspondence and negotiation which the Commissioner attempted to facilitate between the parties, the Commissioner was unable to resolve the complaints informally.

Findings of Fact

The Commissioner has found the following as fact:

38. Request dated 11 February 2005

- Information requests (a)–(d) are related requests concerning Green Belt status and the decision making process around that issue. The Council responded to these requests in its letter dated 27 May 2005.
- Information request (e) concerns the Council's Allotments Charter. The Council responded to this request in its letter dated 27 May 2005.
- Information request (f) refers to and reiterates an earlier request concerning the names of individual allotment holders who received compensation for moving to a new site.
- Information request (g) was made prior to January 2005 but it is being treated as if it had been made on 11 February 2005. The request was for the name of the person who authorised a particular action. The Council's response, on 27 May 2005, was to repeat a response it stated it had already given, namely that the decision was made by a board rather than an individual.
- Information request (h) concerned a delay in producing the final total cost figure; the council's response on 27 May 2005 explained the reason for the delay.
- Information request (i) concerned a "Covenant of Deeds"; the Council responded in its letter of 27 May 2005 by seeking clarification from the complainant but stated that the decisions in question were approved by elected Council members. The complainant responded on 30 May 2005 that he had: "easily obtained the Covenant of Deeds for the land situated on Hucknall airfield". It is not apparent whether or not this was sufficient clarification for the Council's purposes, but in any event the Council does not appear to have sought further clarification in subsequent correspondence.
- Information request (j) concerned the allotments and the Local Plan. This request is considered in paragraph 52 below.

39. Request dated 21 March 2005

- The complainant's request (k) enquired into investigations made as to the use of public money. The Council provided a response to the complainant in its letter dated 24 March 2005 but this letter was expressly stated to be an interim reply
- The complainant's request (l) concerned the approval of expenditure on relocation of the allotments; the Council responded to this on 24 March 2005 but as above this letter was stated to be an interim reply
- The complainant's request (m) sought the name of the individual

who was responsible for authorising the use of public money. The Council's response dated 24 March 2005 explained that budgets are approved by relevant Boards and that accounts are approved at meetings of the full Council. However as above this letter was stated to be an interim reply

40. **Request dated 23 October 2005**

The complainant's request (n) concerned a figure for damages financed by the Council. He received the following response from the Council in its letter dated 13 December 2005: "This information will be obtained and released subject to the possible application of any exception which may be appropriate under the legislation." However there is no indication that the Council made any further response to this request and it therefore remains outstanding.

Analysis

Analysis of the response to the request dated 11 February 2005

41. The Commissioner has analysed the content of the Council's responses to information requests (a) –(e) and (g)--(i). In respect of request (i) the Commissioner considers that the Council has failed to comply with regulation 5 in that it has failed to respond to the request for information, even after the provision, at its request, of clarification by the complainant.

Analysis of the response to the request dated 21 March 2005

42. Since the Council's letter to the complainant dated 24 March 2005 was expressly stated to be an interim reply and it appears that no further letter was sent by the Council in response to these particular requests, a full response remains outstanding.

Analysis of the response to the request dated 23 October 2005

43. The Council has not responded to the request contained in this letter and therefore a full response also remains outstanding.

Procedural breaches in relation to the request dated 11 February 2005

44. Whilst the Council responded to the complainant's request (f) regarding individual compensation recipients in a letter dated 15 March 2005, and responded to all other aspects on 27 May 2005, it did not comply with regulation 5(2) in respect of requests (a) – (j) inclusive to the extent that such responses were not received within the twenty working day time for response.

45. In respect of the Council's letters of 15 March and 7 April 2005, the Commissioner found that the Council incorrectly applied regulation 7 in seeking to extend the time available for consideration of the public interest test.
46. The Council also failed to explain the basis of its refusal in so far as it did not seek to explain to the complainant the basis of its consideration of the public interest test.

Procedural breaches in relation to the request dated 21 March 2005

47. The Council was in breach of regulations 5(2) and 14 of the EIR in failing to respond to the complainant within 20 working days and in failing to provide a satisfactory refusal notice as to why the outstanding information would not be provided. In addition the Council failed in its letter dated 24 March 2005 to state the complainant's right to seek an internal review.

Procedural breaches in relation to the request dated 23 October 2005

48. The Council was in breach of regulations 5(2) and 14 of the EIR in failing to respond in full to the complainant's request or to provide a satisfactory refusal notice within 20 working days.

Exceptions applied in relation to the request dated 11 February 2005

49. Information request (f) refers to a request for the names of individual allotment holders who received compensation. The Council had replied to this request on 15 March 2005, stating that this information was "exempt" from disclosure under regulation 13 of the EIR since it constituted "personal information". In its letter dated 27 May 2005 the Council repeated this refusal. The council's response is considered below.
50. On 27 May 2005 and subsequently the Council claimed, in relation to request (f) dated 11 February 2005, that the Data Protection Act 1998 precluded it from disclosing to the complainant details of the individual names of allotment holders who received compensation, together with the amounts awarded. The Council had already provided to the complainant a total figure; however it stated in its letter to the ICO dated 15 November 2005 and in its letters to the complainant that it had applied the exception under regulation 13 of the EIR since the information was personal data relating to individuals. The Council's internal review of the complainant's requests maintained this view.
51. The Commissioner has considered and examined the information which had been withheld by the Council. This consisted of the specific amounts of compensation agreed or otherwise with each individual named allotment holder. Having considered regulation 13(2), the

Commissioner has reached the following conclusions:

- the information is clearly “personal data” since it related to individuals who could be identified from the data.

In relation to the other criteria:

- the data contained specific financial and personal information in respect of named individuals. In the circumstances of this case, the Commissioner has noted that there has been a controversial background to the relocation of the allotments, entailing considerable local interest and media publicity. The Commissioner considers that the individuals would have had a reasonable expectation that the data would not be disclosed. The Commissioner therefore considers that disclosure of the data would be unfair and in breach of the first data protection principle.
- the total figure paid to allotment holders in compensation has already been provided by the council. The public interest in disclosing further details of this figure, ie the individual amounts awarded to named allotment holders, is outweighed by the need to protect the confidentiality of the personal data of the individual allotment holders.

The Commissioner has therefore concluded that the exception was correctly applied by the Council.

52. Request (j) concerned the allotments and the Local Plan. In its response dated 27 May 2005 the Council explained the background and referred the complainant to minutes of the appropriate Council meeting contained on the Council’s website, claiming incorrectly that this information was therefore “exempt” from disclosure under section 21 of the Act. The correct legislation would have been regulation 6 of the EIR. However the Commissioner is in other respects satisfied with the application of this exception.

The Decision

53. The Commissioner’s decision is that the Council correctly applied regulation 13 as a basis for withholding information about the individual compensation awarded to named allotment holders, however that the Council did not deal with the complainant’s requests for information in accordance with regulations 5, 7 and 14 of the EIR.

Steps Required

Requests contained in a letter dated 11 February 2005:

54. The Commissioner requires the Council to respond fully to the complainant's request contained in his letter dated 11 February 2005 and lettered (i) in the attached Annex, regarding the Covenant of Deeds.

Requests contained in a letter dated 21 March 2005

55. The Commissioner requires the Council to respond to the requests contained in the complainant's letter dated 21 March 2005 and lettered (k) (l) and (m) in the attached Annex, as it had indicated in its holding letter dated 24 March 2005.

Request contained in a letter dated 23 October 2005

56. The Commissioner also requires the Council to respond to the complainant's request for information (n) regarding damages paid to the individual named in the complainant's letter dated 23 October 2005, as it had indicated in its letter dated 13 December 2005.

Right of Appeal

Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX
Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 27th day of March 2007

Signed

**Richard Thomas
Information Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Requests Annex

Information requests dated 11 February 2005

"I would like to know using the Freedom of Information Act:

- (a) When the greenbelt boundary was moved from Blenheim Lane Bulwell to the City Golf Course.
- (b) The minutes of the meeting when it was decided to remove Blenheim Allotments from greenbelt status.
- (c) The name of the person who proposed giving Blenheim Allotments a brownfield status.
- (d) The name of the person who ultimately decided Blenheim Allotments should be re-classed as a brownfield site.....
- (e) Comprehensive details relating to the City Council's Allotment Charter, including the City Council's commitments to protect allotment holders, City Council's rigorously complying with the Allotment Charter and the name of the person to contact when City Council does not comply with the Allotment Charter.
- (f) It is now many weeks since applying to the City Council's Data Protection Manager for details of the individual allotment holder's (*sic*) names who received public money for agreeing with the City Council's contract to be displaced from their original Blenheim Allotments and move to the City Council's new model allotment sites.
- (g) It is also many weeks since first applying for the individual name of the person who authorised the use of public money for the Blenheim Allotments.
- (h) Please supply details explaining why the final sum for the use of public money has not yet been finalised. Three years is more than sufficient for the City Council to have finalised the cost to the public.
- (i) Please supply the name of the City Council manager who disregarded a Covenant of Deeds to develop a new allotment site.
- (j) The minutes and the name of the person when it was decided to remove Blenheim allotments from the Local Plan. This meeting would have taken place before allotment holders were informed on 31st October 2000 when and informed the City Council were to evict us to accommodate Raleigh (*sic*) .

If you email me I can collect all the above information from the Guildhall's reception."

Information requests dated 21 March 2005

- (k) "During March 2003 the City Council's Audit Manager concluded his investigations into my request of the use of public money involved in the City Council's planning applications for Raleigh Cycle Industry to be relocated on Blenheim allotments, Blenheim Lane, Bulwell.
[The City Council's Audit Manager] reported he was satisfied with the scheme, and found no problems with the identification of eligible persons receiving compensation.
To what depth did [the City Council's Audit Manager] take those investigations

and how was [he] satisfied with the scheme?"

and:

(l) "Local councils have until 30th September of the financial year to approve their accounts.

Would the £1,853,100 total amount shown in the 6th August 2002 letter been (*sic*) approved before the 30th September 2002?"

and:

(m) "I'm aware of the Committee responsible for deciding using public money but I do not know the name of the individual who was ultimately responsible for authorising the use of public money. Who was that person?"

Information request dated 23 October 2005

(n) "We would like to know the total figure of damages financed from public funds by the City Council to the person who financed Blenheim Against Development's legal fees".

Legal Annex

Regulation 5 of the EIR

Regulation 5(1) states:

“(1)...a public authority that holds environmental information shall make it available on request.

(2) Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.”

Regulation 7 of the EIR

Regulation 7(1) states:

“Where a request is made under regulation 5, the public authority may extend the period of 20 working days referred to in the provisions of paragraph (2) to 40 working days if it reasonably believes that the complexity and volume of the information requested means that it is impracticable either to comply with the request within the earlier period or to make a decision to refuse to do so.”

Regulation 13 of the EIR

Regulation 13 states:

“(1) To the extent that the information requested includes personal data of which the applicant is not the data subject and as respects which either the first or second condition below is satisfied, a public authority shall not disclose the personal data.

(2) The first condition is-

- (a) in a case where the information falls within any of the paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene-
 - (i) any of the data protection principles; or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress) and in all circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it; and.....

(3) The second condition is that by virtue of any provision of part IV of the Data Protection Act 1998 the information is exempt from section 7(1) of that Act and, in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it.”

Regulation 14 of the EIR

Regulation 14 states:

“(1) If a request for environmental information is refused by a public authority under regulation 12(1) or 13(1), the refusal shall be made in

writing and comply with the following provisions of this regulation.

(2) The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.

(3) The refusal shall specify the reasons not to disclose the information requested.....” and

“(5) The refusal shall inform the applicant –

(a) that he may make representations to the public authority under regulation 11; and

(b) of the enforcement and appeal provisions of the Act applied by regulation 18.”