

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

Decision notice

Date: 11 June 2013

Public Authority: Otley Town Council
Address: 7 Bay Horse Court
Otley
LS21 1SB

Decision (including any steps ordered)

1. The complainant has requested the minutes of a meeting held between Otley Town Council and third parties.
2. The Commissioner's decision is that the council applied the Freedom of Information Act when considering the request but the information is in fact environmental information. The council should therefore have considered the information under the Environmental Information Regulations 2004.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - To consider the request for information under the Environmental Information Regulations 2004 and to 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 27 June 2012, the complainant requested from Otley Town Council ("the Council") information of the following description:

- Minutes of a meeting between Taylor Wimpey and Otley Town Council held on 21 May 2012
6. On 2 July 2012 the Council responded by refusing to release the information on the grounds that it would or would be likely to prejudice the commercial interests of Taylor Wimpey and relied on section 43(2) of the Freedom of Information Act 2000.
 7. The complainant requested an internal review on 12 September 2012. In an undated letter the council sent her the outcome of its internal review, which was to uphold its original position.

Scope of the case

8. On 31 August 2012, the complainant contacted the Commissioner to complain about the way her request for information had been handled. After the Council had reviewed its original decision (see paragraph 7 above) the Commissioner went on to consider the complaint.

Reasons for decision

9. Regulation 2 of the EIR states that environmental information is any 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;
 - (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;
10. The Commissioner has considered the information falling with the scope of the request. The withheld information relates to possible development of land within the geographical boundaries of the Council. As such it is information concerning measures and plans likely to affect the state of the elements as stated in paragraph 9 above. Accordingly the Commissioner considers that the information is environmental information and that the Council should have considered the request under the EIR rather than under the FOIA.

Other Matters

11. As part of the Commissioner's investigation he asked the Council to provide him with a copy of the requested information. The Council informed him that the requested information was stored on a computer and the password to the information could not be remembered by the relevant employee. Following further enquiries, this prompted the Commissioner to serve an information notice, pursuant to section 51 of the Act, on the Council. The Council complied with the information notice by providing the Commissioner with a copy of the requested information.
12. A code of practice¹, issued under section 46 of the Act, gives guidance on good practice in records management and the obligations of public authorities under the Public Records Acts to maintain their records in an ordered and managed way, so that they can readily retrieve information when it is needed. Though the code of practice is not, in itself, legally binding failure to follow it is likely to lead to breaches of the FOIA and EIR. This is because it would be harder for a public authority to comply with requests made to it under the legislation. Furthermore, in this case the Council's difficulty in engaging with the Commissioner's investigation was due to the way in which the relevant record was managed. The Commissioner would therefore encourage the Council to take heed of the code of practice and take steps to ensure that such an issue does not arise again.

¹ <http://www.justice.gov.uk/information-access-rights/foi-guidance-for-practitioners/code-of-practice>

Right of appeal

13. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

14. 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.
15. 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

Alexander Ganotis
Group Manager – Complaints Resolution
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF