

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

Date: 14 April 2014

Public Authority: Norwich City Council
Address: City Hall
St Peter's Street
Norwich
NR2 1UR

Decision (including any steps ordered)

1. The complainant has requested information contained in a file, referenced 04/00453/F, which concerns an application for planning permission granted on 21 August 2007.
2. The Commissioner's decision is that Norwich City Council has contravened regulations 5(1) and 5(2) of the EIR for failing to make the requested information available to the complainant within the twenty day compliance period.
3. The Commissioner does not require the Council to take any further action in this matter at the present time.

Request and response

4. On 10 December 2012 the complainant wrote to Norwich City Council ("the Council") and requested information in the following terms:

"I want all copy from the current 453F files dated from 30 June 2005 Committee decision to end of file time and thus after 2007."
5. Having received no response to her request for information, the complainant contacted the Commissioner.
6. The Commissioner contacted the Council on 8 February 2013. He provided the Council with a copy of the complainant's information

request and asked the Council to confirm whether a response had been sent to the complainant.

7. On 18 February 2013 the Council informed the Commissioner that it was, "not aware of any outstanding FOI requests that have not already been dealt with."
8. The Council advised the Commissioner that planning permission 04/00453/F was due to expire in 2012. Before the expiration of that permission, the Council received an application for an extension of 04/00453/F. This was given a new reference, 12/01356/ET. Additionally, an application was submitted for a listed building consent under reference 12/01357/L which sought to reinstate a previous consent (reference 04/00454/L) which had lapsed in July 2010.
9. The Council advised the Commissioner of the complainant's designation as an 'Unreasonably Persistent Complainant'. This means that the complainant is not allowed to attend City Hall, other than to attend council meetings or to make representations on planning applications.
10. On 20 February 2013 the Commissioner wrote to the Council and asked it to respond to the complainant's information request within 20 days his email.
11. On 13 March 2013 the Council made its response to the complainant. In its response the Council refused to supply the requested information in reliance of section 14 of the FOIA, on the basis that her request was considered to be vexatious.
12. The Commissioner considered the nature of the information sought by the complainant.
13. He determined that the information contained within file 04/00453/F, and the associated files, was likely to be environmental information and would therefore fall to be considered under the EIR rather than the FOIA.
14. The Commissioner contacted the Council on 12 August 2013 to discuss the approach it had taken to the complainant's information request. He explained that the provisions of the FOIA are not open to the Council in respect of environmental information. He asked the Council whether it would be prepared to allow the complainant to inspect the information it holds.
15. The Council determined that it would prefer send the complainant the information she seeks rather than have her attend its offices due to her 'Unreasonably Persistent Complainant' status.

16. The council also informed the Commissioner that it would consider making a charge to the complainant for providing the requested information.
17. The Commissioner advised the Council that he was content with this approach and advised it to consult regulations 5 and 8 of the EIR, together with the ICO's guidance on charging. The Commissioner stressed that the Council should satisfy itself that any charge made should be reasonable.
18. On 10 September 2013 the Council issued a fees notice to the complainant. It asked the complainant to pay £143.80 for the retrieval, collation and provision of the information she seeks.

Scope of the case

19. The Commissioner's investigation of the matters raised by the complainant has focussed on whether the Council has complied with the provisions of the FOIA or EIR up to the date of its issuing the fees notice to the complainant.

Is the requested information environmental information?

20. Regulation 2(1) of the EIR defines what constitutes 'environmental information'. Subsections (a) to (c) state –

'(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 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.'

21. The Commissioner considers that the phrase 'any information...on' should be interpreted widely in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact.

22. In the Commissioner's opinion the information sought by the complainant is likely to constitute environmental information: the information relates to elements of the landscape and also to measures – planning permission and listed building consent, which would affect the landscape. The information request therefore falls to be considered under the EIR.
23. Regulation 5(1) of the EIR states that –
“...a public authority that holds environmental information shall make it available on request.”
24. Regulation 5(2) of the EIR states that
“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.”
25. In reviewing the chronology of this case the Commissioner must find that the Council has contravened regulations 5(1) and 5(2).
26. Ordinarily the information sought by the complainant would be made available to the public for inspection. In this case it is not.
27. The complainant's 'Unreasonably Persistent Complainant' status has been confirmed to the Commissioner by the Council. It has also been upheld by the local Government Ombudsman following a complaint made by the complainant.
28. There is no provision within the EIR that would oblige the Council to vary the conditions associated with the complainant's 'Unreasonably Persistent Complainant' status. Therefore the Council is not obliged to allow the complainant to visit its offices in order to examine the files it holds.
29. The Council can only comply with the EIR by providing the complainant with the information contained in the relevant files.
30. The Council has determined that it is entitled to make a charge for doing this.
31. It is now open to the complainant to pay the Council's fee or to request the Council to review it.
32. If the complainant chooses to ask for a review of the fee and determines that it is unreasonable, it is open to her to make a further complaint to the Commissioner.

Right of appeal

33. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

34. 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.
35. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF