

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

Decision notice

Date: 02 October 2014

Public Authority: Leicester City Council

Address: New Walk Centre
Welford Place
Leicester
LE1 6ZG

Decision (including any steps ordered)

1. The complainant has requested information in relation to a planning matter connected with a building development near to his private address. The plans were submitted to and approved by Leicester City Council (the council). The complainant, through his representative is not satisfied with the council's response as he considers they do hold further information relevant to his request.
2. The Commissioner's decision is that the council, on the civil standard of the balance of probabilities, does not hold any further information relevant to the request that has not already been made available.
3. However, the Commissioner has found that the council has breached regulation 5(2) of the EIR in regards to this information request and how long it took to respond.
4. The Commissioner does not require the council to take any steps to ensure compliance with the legislation.

Request and response

5. On 08 February 2014, the complainant wrote to the council and requested information in the following terms:

"Requested under Environmental Regulations/Freedom of Information Act

I enclose r g p plan indicating two student blocks built opposite my house. (Phases 3 and 4) owned by Jamie Lewis Residential Lettings.

I also enclose planning permission details for the Development Application No 20110539.

I am requesting detailed Architects (r g p) plans or auto cad for:-

Western Road Elevation of 5 storey building (phase 4)

East (Bede Park) Elevation of 8/9 storey building (phase3)

I confirm that I am happy to meet the cost of the plans."

6. The council responded on 03 April 2014. It stated that all the relevant planning documents were available through their website via a link¹ they provided. The council also provided a copy of the information on disc.
7. On the 13 April 2014 the complainant requested an internal review as he wanted a copy of plans with the dimensions on.
8. Following an internal review the council wrote to the complainant on 07 May 2014 to confirm that it did not hold a copy of the plans with dimensions specified on them. The council was, however, able to provide a full size version of the plans with the scale specified.

Scope of the case

9. The complainant, via his representative, contacted the Commissioner initially on 04 April 2014 to complain about the time taken for the council to provide a response. The Commissioner was contacted again
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<http://rcweb.leicester.gov.uk/planning/onlinequery/Details.aspx?AppNo=20110539>

on 11 May 2014, when a complaint was made about the outcome of the internal review.

10. The Commissioner considers the scope of the case is to determine if the council is correct when it states that it does not hold any further information that has not already been made available to the complainant.

Reasons for decision

Is the information Environmental Information

11. Regulation 2(1) of the EIR define environmental information as, among others, information on:
 - (a) *"The states 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;" and*
 - (b) *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;"*
12. The requested information that the council has stated it holds, copy of the building plans etc., in the Commissioner's view would fall to within the definition of regulation 2(1)(c) as 'measures' likely to affect the elements of the landscape defined in regulation 2(1)(a).

Regulation 5(1) of the EIR

13. Regulation 5(1) of the EIR stats that:

"Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and part 3 of these Regulations, a public authority that holds environmental information shall make it available on request".

14. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. He will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by

the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held, he is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.

15. In the internal review the complainant specifically requested as follows, *"I need the plans/autocad which the Developer Jamie Lewis Residential Lettings has built to, with the dimensions specified."*
16. When asked by the Information Commissioner, the council, having consulted with their planning department who would have the appropriate knowledge, responded that:
 - a - A full set of the plans was provided in paper format (reduced size) because at the time of the request they had not been scanned onto the council's website;
 - b - A full set of the approved plans was subsequently supplied as well as a full size version of the plans with the scale specified;
 - c - Although the council now requires critical dimensions on application plans this was not the case at the time of the [planning] application;
 - d - The council does not have the facility to accept plans in autocad format and did not have the capability to read that format when the plans were submitted;
 - e - A copy of the plans was also provided on disc and the appropriate link to the planning information on the website was also provided;
 - f - The council does not hold a copy of "the plans/autocad which the Developer Jamie Lewis Residential Lettings has built to";
 - g - A non-material amendment (that does not show dimensions) was made to the plans and subsequently approved, and the complainant was notified accordingly. No further plans with actual dimensions were submitted as they were not required by law.
17. The Commissioner is therefore satisfied that on the balance of probabilities, the information specified in the request for review is not held by the council. Accordingly, he does not consider that there was any evidence of a breach of regulation 5(1) of the EIR.

Regulation 5(2) of the EIR

18. Regulation 5(2) of the IER 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".

19. As the council did not provide its response in the required 20 working day period from receipt of the request, the Commissioner finds that the council has breached regulation 5(2) of the EIR. The request was received on 08 February 2014 and the response was issued on 03 April 2014.

Right of appeal

20. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

21. 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.
22. 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
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SK9 5AF