

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

Decision notice

Date: 16 July 2015

Public Authority: Stoke-on-Trent City Council
Address: Civic Centre
Glebe Street
Stoke-on-Trent
ST4 1HH

Decision (including any steps ordered)

1. The complainant has requested information from Stoke-on-Trent City Council (the "Council") relating to repairs and maintenance for Queens Theatre, Burslem. After initially refusing, the Council provided information upon internal review. However, it neglected to provide scaffolding permits for 2012. Following the Commissioner's intervention it provided these permits. However, its response contravened the requirements of Regulation 5 and Regulation 11 of the EIR. These relate to the timeliness of its compliance with information access requests and requests for internal review.
2. The Commissioner's decision is that the Council has contravened its obligations under Regulation 5(2) and Regulation 11(4) of the EIR.
3. No steps are required.

Request and response

4. On 9 June 2014 in an email with the subject of Queens Theatre, Burslem, the complainant requested information of the following description:

"[1] In the last 5 years how much has been spent by SOTCC on repairs and maintenance of the Queens Theatre in Burslem? Please provide a breakdown of costs

[2] How much has been spent on scaffolding associated with the Queens Theatre in Burslem in the last 3 years? Please provide invoices

[3] Has the cost of repairs maintenance been charged to the lease holder? If so how much of this cost?

[4] Are licenses required to erect scaffolding on the public highway or pavement?

[5] Did Stoke-on-Trent City Council (or its contractor) get licences for the scaffolding outside the Queens theatre? If so when - Please provide a copy".

5. On 2 July 2014, the Council responded. It argued that all the information was exempt from disclosure under Regulation 12(5)(b) – Disclosure would adversely affect the course of justice.

6. The complainant requested an internal review on the same day (2 July 2014) but the outcome of the internal review was sent to him several months later on 28 November 2014. The Council revised its position.

7. In response to request 1, it said:

"The full responsibility for repair and maintenance of the Queens Theatre is the Leaseholders responsibility".

In response to request 2, it provided some information and explained that other information was not held. It said:

"The financial value associated with scaffold over the last three years, is approximately £100,785. Please note that a portion of this cost will be paid by the council's insurer.

As we do not directly employ the scaffold contractors, not all invoices are available. The charge from Kier to Stoke-on-Trent City Council is presented as either a spread sheet of charges or as an invoice (the charges relate to scaffold and other activities relating to the ordered work)".

It listed various associated scaffolding costs, including the contract percentage.

In response to request 3 it repeated that the responsibility for repair and maintenance of the theatre rested with the Leaseholder.

In response to request 4, it confirmed that licences were required.

In response to request 5, it provided copies of some of the licenses with some personal information redacted under Regulation 13 (Unfair

disclosure of personal data). However, it did not provide a copy of pavement permits for 2012 (the "2012 permits").

Scope of the case

8. The complainant contacted the Commissioner on 5 January 2015 to complain about the way his request for information had been handled.
9. The Commissioner contacted the Council about this and it provided the complainant with a copy of the 2012 permits on 16 April 2015. The complainant did not dispute the Council's application of Regulation 13 to the personal data withheld as indicated at paragraph 7 above. However, he asked the Commissioner to issue a decision notice about the delay that arose in the provision of this information.
10. This decision notice therefore considers whether the Council has complied with its timeliness obligations under the EIR.

Reasons for decision

Is the information environmental?

11. Information is "environmental" if it meets the definition set out in regulation 2 of the EIR. Environmental information must be considered for disclosure under the terms of the EIR. Under regulation 2(1)(c), any information about measures (including administrative measures), affecting or likely to affect the elements and factors referred to in (a) and (b), will be environmental information. The requested information relates to permits for erecting scaffolding on a public footpath in connection with building work being carried out on a public building. The Commissioner therefore considers that the requested information is environmental and the request should be dealt with under the terms of the EIR.¹

Failure to communicate information

12. Under the Regulation 5(2) of the EIR, a public authority has a duty to inform the requester whether it holds the requested information and if
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¹ https://ico.org.uk/media/for-organisations/documents/1146/eir_what_is_environmental_information.pdf

so, to communicate the requested information to them *'as soon as possible, and no later than 20 working days after the date of receipt of the request'*.

13. In this case, the complainant requested the 2012 permits on 9 June 2014. The Council did not provide them until 16 April 2015, following the Commissioner's intervention. In failing to provide the 2012 permits within 20 working days, the Council contravened the requirements of Regulation 5(2) of the EIR.

Internal review

14. Regulation 11(1) of the EIR provides that an applicant may make representations to a public authority, if he/she considers that the authority has failed to comply with the requirements of the EIR in relation to his/her request.
15. Regulation 11(3) requires that the authority consider the complainant's representations, along with any supporting evidence provided by the complainant, and to decide whether it has complied with the requirements of the EIR. Finally, regulation 11(4) requires that the authority notify the applicant of its decision in relation to the applicant's representations no later than forty working days after receipt of those representations.
16. The Commissioner notes in this case that the complainant clearly requested an internal review on 2 July 2014. However, the Council did not provide the complainant with the outcome of its internal review until 28 November 2014.
17. In failing to provide the complainant with notice of its decision in response to the complainant's representations within the appropriate time period, the Council failed to comply with regulation 11(4).

Right of appeal

18. 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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

19. 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.
20. 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
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