

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 30 June 2015

**Public Authority:** Oxford City Council  
**Address:** St Aldgate's Chambers  
St Aldgate's  
Oxford  
OX1 1DS

#### Decision (including any steps ordered)

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1. The complainant complained that Oxford City Council had not responded to his request in relation to a roof garden. During the Commissioner's investigation, Oxford City Council responded to the request.
2. The Commissioner's decision is that Oxford City Council was late in responding to the complainant's request.
3. The Commissioner considers that OCC has breached regulations 5(1) and (2). He does not require Oxford City Council to take any further steps as a result of this decision.

#### Request and response

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4. On 17 December 2014 the complainant submitted a request to Oxford City Council (OCC) in the following terms:

*"I hereby make a request under the DPA and or FOI Act for the following information.*

*Background:*

*A complaint was made by third parties to a roof garden on top of [redacted] - the freehold of which is owned by [redacted]. The complainant apparently believed it belonged to a [redacted], who is a [redacted] and a leaseholder in the building.*

*The roof garden is on land/buildings owned by [redacted] as what is*

*termed the common parts. It is not part of any one of the individual leaseholders.*

*A [redacted] investigated the complaint, being in touch initially with [redacted] and was put in touch with the person who made the alterations [redacted] of flat 1, one of the six leaseholders.*

*On behalf of [redacted] , of which I am the chair, can you kindly send me all correspondence in this matter including but not limited to the original complaint, file notes, letters emails in and out including from and to [redacted], [redacted], and or [redacted].*

*I am sure you can appreciate there is a concern we have given [redacted] position that it is an unauthorised alteration to a Grade II\* listed building. We will assist the LPA/[redacted] as much as possible but need to see the correspondence and what is going on."*

5. OCC responded on 2 January 2015, acknowledging receipt of the request and explaining that it was considering the request under the FOIA and would respond within 20 working days.

## **Scope of the case**

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6. The complainant contacted the Commissioner on 19 January 2015 to complain about the OCC's non-response to his request. The Commissioner contacted the OCC about this. He also explained that he considered that the request should have been considered under the Environmental Information Regulations 2004 (the EIR).
7. OCC responded to the complainant on 29 January 2015 under the EIR.
8. The Commissioner will consider the OCC's delay in responding to the request under the EIR.

## **Reasons for decision**

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### **Regulation 2 – is the requested information environmental information?**

9. Information is 'environmental information' if it meets the definition set out in relation 2(1)(a) to 2(1)(f) of the EIR.
10. The Commissioner asked the council to explain why the requested information could be considered as EIR. The council explained that the requested information related to the erection of a fence and decking that

had been added to the roof top garden. The Commissioner considers that information in this case can be classed as environmental information as defined in 2(1)(a) of the EIR. This states that information on the state of the elements listed in regulation 2 will be environmental information. One of the elements is land and the Commissioner considers that the erection of the fencing would fall under this.

## **Regulation 5**

11. Regulation 5(1) of the EIR states:

*"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 ."*

12. Regulation 5(2) of the EIR states:

*"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."*

13. The Commissioner notes that in order for OCC to have complied with the 20 day working limit set out in regulation 5(2), it should have responded to the complainant promptly and no later than the twentieth working day after receipt. In this case that would have been 19 January 2015. However, the HO did not respond until 29 January 2015.

10. The Commissioner therefore considers that the OCC has breached regulations 5(1) and 5(2) of the EIR.

## Right of appeal

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14. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

15. 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.
16. 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 .....**

**Jon Manners**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**