

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

**Decision notice**

**Date:** 12 February 2018

**Public Authority:** Sunderland City Council  
**Address:** Civic Centre  
PO Box 100  
Burdon Road  
Sunderland  
Tyne and Wear SR2 7DN

**Decision (including any steps ordered)**

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1. The complainant has requested information about a development at Pier Point, Sunderland. Sunderland City Council ('the Council') released some information but withheld other information under regulation 12(4)(d) of the EIR as it said it was material still in the course of completion. On reconsideration, the Council revised its position, which is now that it does not hold the specific information requested.
2. The Commissioner's decision is that at the time of the request the Council:
  - breached regulation 5(1) and 5(2) as it held information within the scope of the first element of the complainant's request but has not released it to the complainant within 20 working days;
  - is entitled to rely on regulation 12(4)(a) to refuse the second element of the complainant's request as it did not hold this information; and
  - breached regulation 14(2) because it did not refuse the second element of the request within 20 working days.

3. The Commissioner requires the Council to take the following step to ensure compliance with the legislation:
  - Disclose the information it holds that is relevant to the first part of the complainant's request or, if it is refusing to disclose this information, issue the complainant with a refusal notice that cites the exception on which it is relying.
4. The Council 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

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4. On 10 April 2017, the complainant wrote to the Council and requested information in the following terms:

*"Can you please inform me if Pier Point Development Roker Sunderland has been granted a building control completion certificate.*

*If the development has not been granted a completion certificate can you please provide any information you hold as to why the completion certificate has not yet been granted."*

5. The Council responded on 2 May 2017. The Council said that Building Regulation completion certificates had been issued to the first floor apartments in the development in question but that there was still some works to complete with respect to the ground floor units and so certificates had not been issued to these units.
6. From the information the Council has provided to her, the Commissioner understands that the ground floor of the Pier Point development was subsequently granted completion certificates in October 2017.
7. The complainant submitted a request for an internal review on 7 May 2017, asking the following:

*"Your reply omits the status of the first floor office within this development. Can you please inform me if this office has been granted a building control completion certificate and if not why not...Can you please provide the following information, what works need to be completed on the ground floor units for a building control completion certificate to be granted."*

8. The Council provided a review on 26 May 2017. It had considered the request under the EIR. Its position was that information it holds falling within the scope of the complainant's request – namely email correspondence and particular certificates – was excepted from release under regulation 12(4)(d) of the EIR as it was material still in the course of completion, and the public interest favoured maintaining this exception.
9. The Commissioner considers that the complainant's questions in his request for an internal review are seeking information that is covered by his original request. She assumes that the completion certificate for the first floor would have included the first floor office.
10. During the course of her investigation, the Council withdrew its reliance on regulation 12(4)(d) and sought to rely on regulation 12(4)(a). On 19 December 2017, the Commissioner advised the Council to communicate its new position to the complainant.

### **Scope of the case**

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11. The complainant contacted the Commissioner on 27 June 2017 to complain about the way his request for information had been handled.
12. The Commissioner's investigation has focussed on whether, at the time of the request, the Council held information falling within the scope of the two elements of the complainant's; whether it has complied with regulation 5(1) and 5(2) with respect to some of the requested information, whether it can rely on regulation 12(4)(a) with respect to other information and whether it has complied with regulation 14(2) with regard to this information.

### **Reasons for decision**

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#### **Background**

13. The Council has provided the Commissioner with an explanation of the building certification process. It has explained that an architect can partner with a local authority to develop a particular site and that, in this case, the architecture practice 'Fitz' had partnered with South Tyneside Council develop the Pier Point site. Fitz had submitted its plans for the development to South Tyneside and South Tyneside had approved the planning application. Because the development is based in Sunderland, Sunderland Council was, however, responsible for

inspecting the site to make sure that works were carried out in accordance with the approved plans.

14. The Council has pointed out that it is not legally necessary to issue a 'Completion Certificate' once all the works are finished satisfactorily. Not all developers ask for one, but some do as it might help to sell the development in the future, for example. The Council will, however, need to be satisfied that a new building is safe for occupancy. In cases where it is not satisfied that a building is safe, it will take the necessary enforcement action.

**Regulation 5(1) – duty to make environmental information available on request / regulation 5(2) – time for compliance**

15. Regulation 5(1) says that a public authority that holds information shall make it available on request.
16. The Commissioner has reviewed the request the complainant submitted on 10 April 2017. The first element of the request is for:

*"Can you please inform me if Pier Point Development Roker Sunderland has been granted a building control completion certificate..."*

17. On the face of it, this part could be categorised as a 'Yes/No' question, rather than a request for recorded information, and this is how the Council appears to have approached it. With the benefit of hindsight, a more appropriate approach would have been to have approached this element as a request for recorded information under the EIR and for the Council to have asked itself "Do we hold recorded information that addresses this element of the request?"
18. From its response, it appears that the Council *did* hold some relevant information; namely completion certificates for the first floor including the apartments and, the Commissioner assumes, a first floor office. The Council did not however release these to the complainant. The Commissioner understands that the Council originally considered it could rely on regulation 12(4)(d) with respect to this information; however the Commissioner notes that the Council subsequently withdrew its reliance on this exception.
19. The Commissioner must therefore find that the Council breached regulation 5(1) with regard to the first element of the complainant's request.
20. Regulation 5(2) says that a public authority must make the information available as soon as possible and within 20 working days following the date of receipt of the request. In this case, the Council has not made

the information available within 20 working days and has therefore breached regulation 5(2).

**Regulation 12(4)(a) – environmental information not held**

21. Regulation 12(4)(a) says that an authority may refuse to disclose information to the extent that it does not hold that information when an applicant's request is received.
22. The second part of the complainant's request was expressed as follows:  
*"If the development has not been granted a completion certificate can you please provide any information you hold as to why the completion certificate has not yet been granted."*
23. The Council again provided a narrative response to this part, indicating that there was still some works to complete with respect to the ground floor units and so certificates had not been issued to these units. As a result of the Commissioner's investigation, the Council has now asked itself "Did we, at 10 April 2017, hold recorded information that addresses this element of the request?" That is, recorded information that addressed why the ground floor of the development had not been granted a completion certificate.
24. The Council has confirmed to the Commissioner that, at the time of the request, no completion certificate for the ground floor of the development had been granted. It has searched for any recorded information it held at 10 April 2017 on why a certificate had not been granted that stage.
25. The Council has told the Commissioner that it has searched through its electronic records held by its Building Control team and has not been able to identify any information that specifies what works were outstanding at the date of the request or the reason why no completion certificate had been granted.
26. The Council has provided to the Commissioner copies of information that it did identify and which fell broadly within the scope of the request. However, it considers this information does not address the specific request the complainant has submitted.
27. The information the Council has provided comprises: short email correspondence containing comments on the proposed Pier Point development; a list, from 2014, of outstanding conditions; short correspondence from 2014 concerning a Fire Officer's report; a Decision Advice Notice and a covering letter of unknown date and short email correspondence from 2015 concerning completed works and associated certificates.

28. Given the specifics of the complainant's request – which was for recorded information on why no building control completion certificate for the ground floor of the development had been granted - the Commissioner agrees that the information the Council has provided to her does not address this request.
29. With regards to the 2014 list of outstanding conditions, the Council's Building Control department has confirmed that this does not address the request as the conditions on the list are not the reason why the ground floor of the development had not been granted a completion certificate at April 2017.
30. The request is for very specific information. The Commissioner notes that the Council has carried out an electronic search of the information held by its Building Control department, which did not retrieve any relevant information. In the course of this investigation, the Council has also approached the Building Control department more than once. On 5 February 2018, this department again confirmed that no relevant recorded information was held. Building Control confirmed that when its site surveyors are carrying out inspections they would record details of the work at that stage. They would not, however, record details of work required or certification required leading up to completion. This is because this would entail masses of information and recording, depending what stage the work was at the time of each inspection.
31. At the time of the request, and as the Council had indicated in its response the complainant, the Council was aware that it was awaiting some further information about particular works, which the Commissioner understands to have concerned fire safety. The Council has confirmed to the Commissioner that it holds no recorded information about this further work as it would have been discussed on site or over the telephone.
32. Having considered the matter, the Commissioner is prepared to accept, on the balance of probabilities, that the Council does not hold the specific information that has been requested; that is information on why, at 10 April 2017, the ground floor of the Pier Point development had not been granted a completion certificate. She finds that the Council is therefore entitled to rely on exception 12(4)(a) to refuse this element of the request.
33. Regulation 12(4)(a) is subject to the public interest test but the Commissioner's position is that it is not necessary to consider the public interest as to do so would be illogical. The public interest cannot favour disclosure of information that is not held.

**Regulation 14 – refusal to disclose information**

34. Regulation 14(2) says that a refusal made under regulation 12(1) shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.
35. In this case, the complainant submitted his request on 10 April 2017 and the Council did not refuse the request until 26 May 2017. At this point it applied regulation 12(4)(d) which, in December 2017, it revised to regulation 12(4)(a). The Council therefore breached regulation 14(2) on this occasion.

## Right of appeal

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36. 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)

37. 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.
38. 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**  
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