

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

Decision notice

Date: 26 July 2018

Public Authority: Norwich City Council
Address: City Hall
Norwich
NR2 1NH

Decision (including any steps ordered)

1. The complainant has requested information with regards to development sites. Norwich City Council (the council) provided the information it held to part of the request, and requested clarification to the other part of the request.
2. The Commissioner determined that the request was for environmental information and her decision is that the council breached regulation 14(1) of the EIR in not providing a valid refusal notice within the required timeframes, breached regulation 14(3) of the EIR for not refusing part of the request under regulation 12(4)(c) of the EIR – information formulated in too general a manner - and breached regulation 5(2) of the EIR in not providing the information it held within the required timeframes.
3. The Commissioner also found that the council was able to request clarification from the complainant to the part of the request as per regulation 12(4)(c) of the EIR and has complied with regulation 9 of the EIR in providing appropriate advice and assistance. She also found that the council holds no further information within the scope of the request.
4. As the council has provided the information it holds, the Commissioner does not require the council to take any steps and it would now be for the complainant to clarify to the council what it is she requires to the part of the request that regulation 12(4)(c) has been found to be engaged to, should she wish to do so.

Request and response

5. On 10 July 2017 the complainant made the following information request to the council:

“...a sample of Letters To, Replies from Updates Exchanges between you sent to English Heritage /Historic England as is now, about the development sites within that Key Plan for Norwich.
Include sites M001 002 003 004 with all exchanges of documents by which EH would assist in replying to the council.
There are only summaries of response on the final Plan as Published . What other samples than M001 02 003 0004 I leave to you so long as you elect significant sites of the very very many I do not seek in total by which to assist you , between you and EH about key sites and their Listed Building Conservation Amenity Remit.”
6. The complainant contacted the Commissioner on the 18 August 2017 to complain that the council had not responded to her request.
7. Following contact from the Commissioner, the council responded on the 25 August 2017 providing information it held. This consisted of three documents, including a letter to the council from English Heritage dated 26 October 2010.
8. On the 25 August 2017 the complainant requested an internal review, making reference to the fact that the English Heritage letter refers to previous comments having been submitted to the council and these have not been provided to her.
9. The council provided its internal review on the 17 October 2017. It concluded that:
 - i. Aspects of the request are ambiguous, in particular, where the request states “...*What other samples than M001 02 003 0004 I leave to you so long as you elect significant sites of the very very many...*” The council asked the complainant to clarify this part of the request before it can consider an appropriate response.
 - ii. With regards to the primary focus of the request where the complainant asks “*Include sites M001 002 003 004 with all exchanges of documents*” the council stated that the information provided is all that has been located.
 - iii. The council also advised that, with regards to the English Heritage letter of 26 November 2010, it acknowledges the letter

does state *"our comments build on those submitted previously"*. However the council maintains no further information is held other than what has been provided, explaining that the period for any challenge to the contents of the council's site allocations plan lapsed shortly after it was adopted in December 2014 and it is therefore long past any period when the council would have a duty to hold such correspondence.

Scope of the case

10. The complainant contacted the Commissioner as she considers the council holds more information than that provided and is not satisfied with the time it has taken for the council to respond to her request.
11. The Commissioner considers the scope of the case is to firstly consider whether the request should be handled under the FOIA or EIR.
12. The Commissioner will then go on to consider whether the council is able to seek clarity to part of the request and then whether it is correct when it states no further information is held to the remaining part of the request.
13. Lastly the Commissioner will determine whether the council responded outside the required timeframes of the appropriate regime.

Reasons for decision

Is the requested information environmental information?

14. Regulation 2(1) of the EIR defines environmental information as, among others, information on:

a) "The state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, costal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;" and

c) "Measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect the elements and factors preferred to in (a) and (b) as well as measures or activities designed to protect those elements;"

15. On reviewing the request, which is in relation to development sites, the Commissioner has determined that the request would fall under the EIR's. In particular it would fall under regulation 2(1)(c) of the EIR – 'measures' that are 'likely to affect' the 'elements' in 2(1)(a) of the EIR.
16. The council has not disputed this position.

Regulation 12(4)(c) of the EIR – Requests formulated in too general a manner

17. Regulation 12(4)(c) states:

12(4) "For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that - ...

(c) the request for information is formulated in too general a manner and the public authority has complied with regulation 9"

18. Determining whether a request has been framed in "too general a manner" will depend on the particular facts of each case. The words "too general" refer to a request that is too unclear or non-specific for the authority to identify and locate the information requested, or a request that is ambiguous, and therefore could be interpreted in more than one way.
19. When in doubt, the authority should seek clarification of the meaning of the request.
20. In this case, the council asked the complainant to clarify only part of her request, this part being:

"What other samples than M001 02 003 0004 I leave to you so long as you elect significant sites of the very very many I do not seek in total by which to assist you , between you and EH about key sites and their Listed Building Conservation Amenity Remit."

21. The Commissioner on viewing this part of the request considers that the complainant's sentence structure is unclear and so can see why the council finds it difficult to be able to understand what the complainant is asking it to provide.
22. The Commissioner therefore finds that regulation 12(4)(c) of the EIR applies in this case.

Public Interest Test

23. As with all EIR exceptions, regulation 12(4)(c) of the EIR is subject to the public interest test.

24. The council in asking for clarification of a request would cause some delay to the complainant. However, if the council did not seek to clarify the request there is a considerable chance that it is going to be providing information that is not being sought wasting both time and resources of the council and the time of the complainant.
25. Therefore the Commissioner finds that the public interest lies in the council requesting clarification of the request rather than disclosing what could easily be the wrong information.

Regulation 9 of the EIR - Advice and assistance

26. Regulation 9 of the EIR requires a public authority to provide advice and assistance" so far as it would be reasonable to do so" when it receives a request that is formulated in too general a manner.
27. In this case, the Commissioner has viewed the council's response and it clearly identified to the complainant which part of the request it required clarity on before it could proceed with that part of the request.
28. Following the council's internal review asking for clarity to this part of the request the complaint did respond further on the 17 October 2017. Having reviewed this correspondence the Commissioner is satisfied with the council's view that clarification has not been provided for it to be able to respond further.
29. The Commissioner is aware that the complainant has been in correspondence with the council for many years and has been supplied with various amounts of information. So the Commissioner sees it as very reasonable that the council has identified to the complainant which part of the request it has found to be unclear and asked her to clarify what she is wanting to be provided with.
30. Therefore the Commissioner finds that the council has complied with regulation 9 of the EIR and does not require it to take any steps and it would now be for the complainant to clarify what it is she requires to the part of the request that regulation 12(4)(c) has been found to be engaged to, should she wish to do so.

Regulation 14 of the EIR – Refusal Notice

31. When a public authority receives a request that it thinks is formulated in too general a manner, it must issue a formal refusal notice specifying that it is refusing the request under regulation 12(4)(c) of the EIR.
32. Regulation 14(1) requires a public authority to issue a valid refusal notice within 20 working days, and regulation 14(3) requires the relevant exemption to be cited in the refusal notice.

33. In this case, although the council responded to seek clarification, it did not issue a valid refusal notice as it did not cite regulation 12(4)(c) of the EIR also its response was issued outside the required 20 working days from the receipt of the request. The request being made on 10 July 2017 and the council's response was on 25 August 2017.
34. The Commissioner therefore finds that the council has breached Section 14(1) and 14(3) of the EIR.
35. Although the Commissioner has found the council has breached regulation 14(1) and (3) of the EIR the Commissioner has found that regulation 12(4)(c) of the EIR is engaged. It would therefore be an improper use of resources to require the council to issue a refusal notice applying regulation 12(4)(c) now. Therefore the Commissioner does not require the council to take any steps.

Regulation 5(1) – Information held/ not held

36. The Commissioner will now go on to consider the remainder of the request and determine whether the council has provided all the information it holds within the scope of it.
37. Regulation 5(1) of the EIR states 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."
38. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions applies the civil standard of the balance of probabilities.
39. The Commissioner must decide whether on the balance of probabilities the public authority holds any further information which falls within the scope of the request (or was held and the time of the request).
40. The council has provided the Commissioner with explanations of the searches it has carried out to ensure no further information is held.
41. The council has explained to the Commissioner that this development started with 'initial calls for sites' in February/ April 2009 and the adoption took place in December 2014.

42. It says that the information that the complainant is seeking would fall between November 2009 and February 2010 – This being the time of the first stage of public consultation on potential development sites.
43. It has stated that an officer, with the help of two colleagues, of the planning service carried out the search as this is the only area of the council where this type of information would be held.
44. The search was for anything relating to English Heritage or Historic England as well as the sites that were listed in the complainant's request.
45. The council has confirmed to the Commissioner that there are no paper records relating to the request, only electronic records which are held on the council's networked system.
46. The council has advised the Commissioner that it has found no evidence of any other information relevant to the request being deleted or destroyed and there are no records of any deletion of any documents that would form part of the request.
47. The council has explained to the Commissioner that since 2010, the planning service moved offices within City Hall in January 2013. During this process a large number of paper records which were no longer considered to be needed were disposed of.
48. It has also told the Commissioner that an officer who led the consultation on the sites document left the council some time before the complainant's request in January 2013. If there had been any correspondence in this officer's emails, this would have been destroyed when he left.
49. The council has confirmed to the Commissioner that there are no other locations where copies may have been made and stored and that there is no business purpose for retaining any other information.
50. The council concluded by telling the Commissioner that following receipt of the request, experienced officer searched the records where any such information could be held, found three documents and provided them in response to the request. No other information has been found.
51. The complainant has provided arguments as to why she considers the council holds further information. One piece of correspondence is an information request response from East Anglia Environment Agency dated 14 March 2018 in which it advises the complainant that it does not hold the information but believes that the information would be held by Norwich City Council.

52. The Commissioner does not see this as evidence that the council holds further information, it is simply a public authority directing the complainant to another public authority it believes the information would most likely be held.
53. She has also provided an email dated 22 April 2013 by a council officer which states that on 17 April 2013, the council formally submitted the local plan documents to the Secretary of State for Communities and Local Government for independent examination. However, the Commissioner notes that the complainant's request is for correspondence between the council and English Heritage /Historic England. This is not that information.
54. On review of the above, the Commissioner is of the view that the council has carried out relevant searches in the most relevant places in order to locate the information it has.
55. It has explained that a large number of paper files have been disposed of in early 2013, during an office move and that an officer who led the consultation on the sites document left the council around the same time, with any emails they may have held being deleted on their departure.
56. The fact that part of the request also requires clarification (as determined above under regulation 12(4)(c) of the EIR) may add to explain why the complainant would have expected to have been provided with more information than she has been given. Until this clarity has been provided to the council by the complainant, it is difficult to determine whether the council holds further information to satisfy her whole request.
57. On this basis, the Commissioner is satisfied on the balance of probabilities that no further information is held falling within the scope of the request.
58. The Commissioner does not require the council to take any steps.

Regulation 5(2) of the EIR – timeframe to respond

59. Regulation 5(2) of the EIR requires a public authority to respond to a request for environmental information within 20 working days following its receipt.
60. In this case the request was made on 10 July 2017 and the council did not respond until the 25 August 2017 which is outside the required 20 working days.

61. The Commissioner therefore finds that the council has breached regulation 5(2) of the EIR.
62. As the council has now responded, the Commissioner does not require it to take any steps.

Right of appeal

63. 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

64. 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.
65. 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