

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 7 April 2021

**Public Authority:** Warrington Borough Council  
**Address:** Town Hall  
Sankey Street  
Warrington  
Cheshire  
WA1 1UH

#### **Decision (including any steps ordered)**

---

1. The complainant has requested information relating to work done on his property and attached buildings. The council initially applied section 12 after estimating that providing the information would exceed the appropriate limit. During the Commissioner's investigation it reconsidered the request and said that, on reflection, no information is held falling within the scope of the complainant's request.
2. The Commissioner's decision is that the request was for environmental information and should have been considered under the EIR. She has also decided, however, that the council was correct to state that no information is held falling within the scope of the complainant's request for information; Regulation 12(4)(a) was therefore applicable. She has also decided that the council did not comply with the requirements of Regulation 5(2) in that it did not tell the complainant that no information was held within 20 working days.
3. The Commissioner does not require the council to take any steps.

## Request and response

---

4. On 17 December 2019, the complainant wrote to the council and requested information in the following terms:

*"Under the freedom of information act 2018 I am asking for all information surrounding the action taken by WBC against GGHT/Torus for the fabricated reports they submitted regarding the works they commissioned / carried out to the property/s known as [address redacted] in 2008, 2012...*

*...Please send me all information from all departments and officers (even the head of WBC if applicable) that shows what action has been taken by WBC for the breaches of building regulations and lies surrounding the aforementioned property/s incidents and what safeguards have been put in to place to prevent this from happening again."*

5. The council responded on 13 January 2020. It said that responding to the request would exceed the appropriate limit for local authorities. It therefore applied section 12 of FOIA in order to refuse to respond to the request further
6. Following an internal review, the council wrote to the complainant on 30 January 2020. It upheld its initial decision.

## Scope of the case

---

7. Following an earlier data protection complaint, the complainant contacted the Commissioner on 14 January 2020 to complain about the way his request for information had been handled. His complaint, at that time, was that the council had refused his request and applied section 12.
8. During the course of the Commissioner's investigation the council recognised that its response to the complainant had been in error. It wrote to the complainant stating that it was no longer relying upon section 12 as, in reviewing its decision, it now realised that does not in fact hold any information falling within the scope of his request. It informed the complainant of its new decision on 18 December 2020.
9. The complainant however believes that the council will hold information falling within the scope of his request. He also outlined other concerns which the Commissioner neither has the powers to consider, nor the scope to do so within her remit of investigating the council's response to this request for information.

10. The sole focus of this decision notice is therefore whether any information is held by the council falling within the scope of the complainant's request for information.

## Reasons for decision

---

Is the information environmental information for the purposes of the EIR

11. Regulation 2 of the EIR defines environmental information as:

*"environmental information" has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on—*

*(a) the state 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;*

*(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);*

*(c) 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;*

*(d) reports on the implementation of environmental legislation;*

*(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and*

*(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);*

12. The information requested relates to a situation regarding changes made to a property due to noise and/or water incursion from another property.
13. The Commissioner therefore considers that the information falls within the definition of environmental information. It is information on measures (Regulation 2(c)) relating to the factors *likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements*.
14. The Commissioner is therefore satisfied that the information falls within the definition of environmental information for the purposes of the Regulations.

Regulation 12(4)(a)

15. The relevant exception with the EIR for information which is not held at the time that a request is received is Regulation 12(4)(a).
16. The council has not sought to apply exceptions to withhold the requested information from disclosure. It argues that no information is held falling within the scope of the complainant's request for information.
17. In scenarios such as this one, where there is some dispute between the public authority and the complainant about the amount of information that 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.
18. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
19. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant's evidence and arguments. She will also consider the searches carried out by the public authority, in terms of the extent of the searches, the quality of the searches, their thoroughness and the results the searches yielded. In addition, she will consider any other information or explanation offered by the public authority which is relevant to her determination.

20. During the course of her investigation, the Commissioner asked the council to describe the searches it carried out for information falling within the scope of the request, and the search terms used. She also asked other questions, as is her usual practice, relating to how it established whether it held further information within the scope of the request.

The council's position

21. The council said that all building regulation applications and related information is held electronically within the council's case management system. The case management system is used for recording building control/regulations related information. A search was carried out by the council's Building Control Department. It said that it had used the property address as a reference in order to carry out searches of its system.
22. The council concluded that the council has never held any information of breaches or violations of building regulations recorded for the property the complainant enquired about. Therefore, it considered that the appropriate response was that it does not hold any information falling within the scope of the request.
23. It clarified that it does hold some building regulations related information in relation to the property, however, when this was checked it was found to be in relation to the works carried out which were deemed to be satisfactory. It said, therefore, that that information is not about any breaches or violations of building regulations at the property, which was the focus of the complainant's request for information.
24. It further clarified that its searches also encompassed any information falling within the first part of the request; "*all information surrounding the action taken by WBC against GGHT/Torus...*". Again, it confirmed that its searches did not find any information falling within the scope of this part of the request.
25. It confirmed that it has never held any information regarding the property and GGHT/Torus having any breaches or violations of building regulations at the property. Therefore, no information has been deleted in the past which would fall within the scope of the complainant's request.

26. It said that its formal records management policy for building control information says that information should be retained for a period of 15 years from date of the completion certificate. It said that this is in accordance with the Building Control Performance Standards 2017, which was issued by the Department of Housing, Communities and Local Government (DHCLG).
27. As regards the Commissioner's question as to whether it holds any similar information which might have answered the complainant's wider concerns, the council clarified that it has already explained to the complainant in its request response that it does hold information in relation to the property, just not in relation to breaches or violations of building regulations. It said that it has had several requests for information from the complainant regarding his own personal data and about the property over at least the last 3-4 years. These have all been responded to by the council, and where the council does not hold information it has advised him which other organisations he could approach to obtain at least some of this information. It said that it has advised the complainant to contact GGHT/Torus directly as it may hold some of the information he is seeking to obtain.
28. It reminded the Commissioner that the complainant has also previously made complaints to her about some of these matters, and noted that she should have a record of some of the requests that the council has received previously.

The complainant's position

29. The complainant alleges that there have been dishonest actions taken by individuals relating, in part, to his property and work carried out on his property, and other properties. He believes that individuals are seeking to cover this up by deleting records which would identify this, potentially across a number of organisations.
30. He argues that the council may not be logging information where it would uncover these underhand actions. He has made allegations against the council, a number of individuals, and against other public authorities which he considers may be hiding information which he provided which would allude and evidence these actions.
31. To be clear, the Commissioner is not able to address or investigate the wider issues highlighted by the complainant. They relate to matters which should be considered by other bodies, such as the Local Government and Social Care Ombudsman (the LGCSO) and the police.
32. The Commissioner recognises that the complainant has contact with both of these organisations regarding the wider issues. Whether or not the issues before these organisations resolved his complaints to his

satisfaction, the Commissioner can only consider the issues directly surrounding the council's response to the request he has made, and whether this was in accordance with the requirements of the EIR.

The Commissioner's conclusions

33. The Commissioner notes that the complainant himself states that:

*"GGHT/Torus continually lied to WBC about the works they carried out / commissioned and WBC accepted these lies and even ignored its own environment departments testing results.*

*So since independent testing was carried out and Housing standards and building control were finally able to assess and test the property (all attempts were thwarted by GGHT/Torus) WBC will have done something.*

*Please send me all information from all departments and officers (even the head of WBC if applicable) that shows what action has been taken by WBC for the breaches of building regulations and lies surrounding the aforementioned property/s incidents and what safeguards have been put in to place to prevent this from happening again."*

34. The complainant's statement suggests that he is not aware whether the council did take any action against GGHT/Torus following the building control violations which he considers were found. His assumption is that it will have done. The council, however, says that there were no building control violations. It said that, whilst it does hold information relating to building control, the information it holds shows that the standard of work was satisfactory. That being the case, the council cannot provide information in relation to breaches of the Building Regulations if no such breaches were found to have occurred.

35. In a similar way, if it took no action against GGHT/Torus because it had decided that the work carried out was satisfactory, then no information would be held which could respond to the first part of the complainant's request for information; details of the action which it took to rectify this, and any safeguards it has introduced to protect against this in the future.

36. Having considered both the arguments of the council, and of the complainant in this instance, the Commissioner has seen no evidence that the council holds any relevant information in this case. The complainant has suggested that the work carried out by GGHT/Torus breached Building Regulations, however the council argues that the work which was carried out was satisfactory. This contrast in their positions provides the nub of why their opinions differ in this case.

37. Public authorities need to take an objective view of the request. The Commissioner's guidance to public authorities on dealing with requests<sup>1</sup> states that:

*"You should read a request objectively. Do not get diverted by the tone of the language the requester has used, your previous experience of them (unless they explicitly refer you to this) or what you think they would be most interested in."*

Where a request is unclear therefore the authority should not try to guess the information which the requestor is seeking; it should clarify this with the requestor.

38. However, in this case the complainant has clearly set out the information which he wishes, based upon a presupposition that the council took action against GGHT/Torus for actions he is aware of. That presumption appears to have been incorrect in this case.
39. The Commissioner does not have the powers or the necessary expertise to decide whether any information held by the council amounts to evidence that a breach of the Building Regulations took place. She must take the council's word on face value in this respect, bearing in mind that this is, ultimately, a decision for the council to make.
40. This being the case, having considered the evidence and submissions of both parties the Commissioner has decided that, on a balance of probabilities, the council does not hold any information falling within the scope of his request for information.
41. She has therefore decided that, on a balance of probabilities, the council has complied with the requirements of Regulation 5(1).

#### Regulation 5(2)

Regulation 5(1) provides 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."*

---

<sup>1</sup> <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/receiving-a-request/>



42. Regulation 5(2) provides 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."*

The complainant made his request for information on 17 December 2019.

43. On 13 January 2020 the council responded, applying section 12. By applying section 12 the council gave the complainant the belief that information was held, but that it would exceed the appropriate limit to locate and provide that information to him.

44. It was not until the council reconsidered its position and reported to the complainant that it does not hold any relevant information, in December 2020, that it correctly responded as required by section 5(1).

45. The Commissioner therefore considers that the council did not comply with the requirements of Regulation 5(2).

## Right of appeal

---

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

47. 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.
48. 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**  
**Head of FoI Casework and Appeals**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**