

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 16 November 2022

Public Authority: Erewash Borough Council
Address: Ilkeston Town Hall
Wharncliffe Road
Ilkeston
Derbyshire
DE7 5RP

Decision (including any steps ordered)

1. The complainant has requested information from Erewash Borough Council (the Council) relating to objections it had received against a planning application. The Council provided the information which it holds within the scope of the request, however, the complainant was not satisfied with some of the information, as they felt it was incorrect.
2. The Commissioner's decision is that, on the balance of probabilities, the Council has provided the complainant with the information which it holds in relation to the request. The Commissioner cannot consider the accuracy of the information provided.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Request and response

4. On 11 November 2021, the complainant wrote to the Council and requested information in the following terms:

"Please supply the data you hold about the following, which I am entitled to receive under the data protection law:

- DLP report for planning reference ERE/0821/0003, [address redacted].
 - Confirm the names for the 6 objection letters received by planning, reference ERE/0821/0003, if you can't provide the names please state why and confirm the number of households that provided the 6 objections.
 - Provide the separate dates for the 6 objections received by the planning office for planning reference ERE/0821/0003.
 - Provide all the information you hold for planning reference ERE/0916/0001, [address redacted], including any notes, plans, any pre planning advice etc.
 - Provide any information held by planning for reference ERE/1089/0002 and ERE/0590/0069 [address redacted]."
5. The Council responded on 25 November 2021. It stated that the report in part one of the request no longer exists. In response to parts two and three of the request, it stated that it will not disclose the names of those who submitted objections, by virtue of regulation 13 of the EIR. It did, however, provide a table which listed the date and address from which each of the six objections were received. Finally, the Council disclosed all files within the scope of parts four and five of the request.
6. The complainant requested an internal review on 3 March 2022. Specifically, they asked the Council to revisit the address and date details which had been provided in response to parts two and three of the request, as the complainant considered that they were incorrect.
7. Following an internal review the Council wrote to the complainant on 14 March 2022. It maintained its original position, that it had disclosed the correct information in response to parts two and three of the request.

Scope of the case

8. The complainant contacted the Commissioner on 29 March 2022 to complain about the way their request for information had been handled. Specifically, the complainant was concerned that the objections may have been made fraudulently by false representation, and that the Council may have accepted them after the cut off date. They later argued that they believe the Council holds more information than it had disclosed to them in relation to parts two and three of the request.

9. It is worth noting at this stage that the Commissioner can only provide his decision on the complaint relating to access to information, and not the accuracy or validity of any information provided in response to a request for information. A public authority will have complied with their obligations under the EIR where they have provided the recorded information which they hold within the scope of a request, irrespective of whether that information is accurate or not. Therefore, the Commissioner cannot assess the accuracy of disclosed information in response to a request, nor can he look into accusations of maladministration.
10. The Commissioner therefore considers that the scope of his investigation is to consider whether, on the balance of probabilities, the Council holds any further information within the scope of parts two and three of the request.

Reasons for decision

Is the information environmental?

11. Information is 'environmental information' and must be considered for disclosure under the terms of the EIR, rather than FOIA, if it meets the definition set out in regulations 2(1)(a) to 2(1)(f) of the EIR.
12. Regulation 2(1)(c) of the EIR states that any information on measures such as policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect the elements or factors of the environment listed in regulation 2(1)(a) and 2(1)(b) will be environmental information.
13. The information requested in this case relates to a planning application. It is the Commissioner's view that the information falls within the definition of 'measures' set out in regulation 2(1)(c) which will, or will be likely to, affect the environment.
14. Therefore, the Commissioner considers that the request is for environmental information, and that the EIR is the appropriate access regime. However, it is important to note that this point is purely procedural and does not affect what information the Council holds in respect of the request for information, or the subsequent outcome of the Commissioner's investigation.

Regulation 5 – duty to make environmental information available on request

15. Under regulation 5(1) of the EIR, and subject to a number of EIR provisions, a public authority which holds environmental information shall make it available on request.
16. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to check that no further information is held, and he will consider any other reasons offered by the public authority to explain why no further information is held. The Commissioner will also consider any reason why it is inherently likely or unlikely that no further information is held.
17. The Commissioner has carefully considered the points made by the complainant and the Council. The complainant has raised reasonable concerns, however, some of these concerns are outside the scope of the EIR and are therefore beyond what the Commissioner has the authority to investigate.
18. In considering the complainant's concerns at internal review, the Council consulted the Development Control Manager, whose searches found that the addresses and dates of the objections which the Council had disclosed in response to parts two and three of the request were correct. The Commissioner is satisfied that the Council's approach to identifying the information which it holds within the scope of the request was appropriate and proportionate.
19. The Commissioner concludes that, on the balance of probabilities, the Council has disclosed the information it holds within the scope of the request, and it is not required to take any further steps on this matter.

Right of appeal

20. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

21. 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.
22. 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

Catherine Fletcher
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Wycliffe House
Water Lane
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SK9 5AF