

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 9 November 2022

Public Authority: North Lincolnshire Council
Address: Church Square House
30-40 High Street
Scunthorpe
DN15 6NL

Decision (including any steps ordered)

1. The complainant has requested a copy of a traffic survey report from North Lincolnshire Council (the Council).
2. The Commissioner's decision is that the requested information is environmental information within the definition at regulation 2(1)(c) of the EIR. The request should, therefore, have been handled under the EIR rather than the FOIA. He also notes that the Council has failed to carry out an objective reading of the request as the complainant did not request a copy of the 'Local Transport Plan'.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation:
 - Reconsider the request and its scope under the provisions of the EIR and issue a fresh response to the complainant.
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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 4 March 2022, the complainant wrote to the Council and requested information in the following terms:

"Please supply the North Lincolnshire Council 'Freight Survey' or 'Traffic Survey' (it has been identified as both) with supporting documentation as listed below. Please provide the following,

- 1) The original outline for the document and the full remit
- 2) The document in its unabridged entirety including executive summary and conclusions if separate.
- 3) All the existing data used and any collected for the report.
- 4) The questionnaire results overview, supporting the delivery of the report.
- 5) A list of all the bodies canvassed for the report and their contribution.
- 6) Those Statutory and related items underpinning the document and its conclusions.

It would be expected items three through six would form part of the report's appendix."

6. The Council responded on 24 March 2022. It confirmed that it held the information requested, but it was withheld under section 22 of the Freedom of Information Act 2000 (FOIA) – information intended for future publication.
7. Following an internal review the Council wrote to the complainant on 9 May 2022. It stated that it upheld its original decision.

Scope of the case

8. The complainant contacted the Commissioner on 3 May 2022 to complain about the way his request for information had been handled.
9. The complainant has argued that the 'Local Transport Plan' which is to be published is not the information which he has requested and therefore section 22 of FOIA does not apply.
10. This decision notice covers whether the request for information has been correctly handled, including whether or not the information is environmental.

Reasons for decision

Regulation 2(1) – definition of environmental information

11. Regulation 2(1) of the EIR provides the following definition of environmental information:

“...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...”

12. It is important to ensure that requests for information are handled under the correct access regime. This is particularly important when refusing to provide information, since the reasons why information can be withheld under FOIA (the exemptions) are different from the reasons why information can be withheld under the EIR (the exceptions). In addition, there are some procedural differences affecting how requests should be handled.

13. The Commissioner has produced [guidance](#) to assist public authorities and applicants in identifying environmental information. The Commissioner’s well-established view is that public authorities should adopt a broad interpretation of environmental information, in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact.

14. The Commissioner is satisfied that the Survey and supporting information which were requested, and which the Council has confirmed it holds, are information on measures and/or activities which are likely to affect the elements and factors of the environment.

15. The information requested would therefore fall within the definition at regulation 2(1)(c) of the EIR and the request should have been considered under the EIR.
16. The Commissioner orders the Council to make a fresh response to the complaint's request of 3 March 2022 under the provisions of that legislation.
17. In so doing the Council should fully reconsider the request ensuring it correctly identifies all information falling within its scope or, if appropriate, respond to the complainant saying that the requested info is not held.

Right of appeal

18. 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

19. 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.
20. 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

Ben Tomes
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF