

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

Date: 20 April 2022

Public Authority: Bassetlaw District Council
Address: Queens Buildings
Potter Street
Worksop
Nottinghamshire
S80 2AH

Decision (including any steps ordered)

1. The complainant has requested information about a planning application. Bassetlaw District Council ('the Council') applied section 21 of FOIA (information accessible to applicant by other means) to the information it holds, and which is published on its website. The Council confirmed that it holds no further relevant information.
2. The Commissioner's decision is as follows:
 - The requested information is environmental information which the Council should have considered under the EIR. However, on the balance of probabilities, the Council holds no further information within scope of the request and regulation 12(4)(a) of the EIR is engaged.
 - As the Council wrongly handled the request under FOIA, the Commissioner has found there to have been a breach of regulation 14 of the EIR.
3. The Commissioner does not require the Council to any corrective steps.

Request and response

4. From the material they provided to the Commissioner, the complainant appears to have been corresponding with the Council about planning applications from at least January 2020. On 4 April 2021 the complainant submitted a request for information to the Council in the following terms:

"...copy of all records relating to planning application 16/01805/out and associated applications. I do not require a copy of the records that are on the council's planning website. Case files 18/01223/HSE, 18/01224/HSE, 16/01805/OUT and 16/01624/CAT"
5. On 27 May 2021 the Council responded to this request. It relied on section 21 of FOIA to withhold the information the complainant requested because the information was already accessible to them, through its website. However, the Council also advised that if the complainant was unable to access any of the documents, the Council could email these documents to them.
6. Correspondence between the complainant and the Council continued, with the complainant requesting an internal review on 2 December 2021.
7. The Council provided an internal review on 30 December 2021. It acknowledged that its response was provided outside FOIA's time limits but upheld its reliance on section 21 of FOIA.

Scope of the case

8. The complainant first contacted the Commissioner on 15 April 2021 to complain about the way their request for information had been handled.
9. The complainant remained dissatisfied once they had exhausted the Council's internal review process. They consider that the Council holds further information relevant to their request that is not published on its planning website.
10. The Commissioner has first considered under which information legislation the Council should have considered the request. His investigation has then focussed on whether, on the balance of probabilities, the Council holds any further information within scope of the request, and its refusal of the request.

Reasons for decision

Is the requested information environmental information?

11. Information is 'environmental information' and must be considered for disclosure, if held, under the terms of the EIR rather than the FOIA if it meets the definition set out in regulation 2(1)(a) to 2(1)(f) of the EIR.
12. Regulation 2(1)(a) defines environmental information as information that concerns the state of the elements of the environment, including water, soil, land and landscape.
13. Regulation 2(1)(c) defines environmental information as information on measures including plans and activities affecting or likely to affect the elements and factors referred to in (a).
14. The requested information in this case concerns a planning application. As such, the Commissioner is satisfied that the information can be broadly categorised as environmental information under regulation 2(1) of the EIR. This is because the information is associated with plans and activities affecting or likely to affect water, soil, land and landscape.
15. The Council was therefore incorrect when it handled the request under FOIA and referred to section 21 of that Act. There is no direct equivalent to section 21 under the EIR. However, the complainant has confirmed to the Commissioner, as they had noted in their original request, that the focus of their request is not the published information but other information that they consider the Council holds and which it has not published.

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

16. The Council holds information relevant to the request, which it has published. Its position is that it holds no further information. Under regulation 12(4)(a) of the EIR, a public authority may refuse to disclose information to the extent that it does not hold that information when an applicant's request is received.
17. When he wrote to the Council, the Commissioner included a series of 15 questions about the published information that the complainant had asked the Council in the course of their correspondence with it, although the date that those questions were sent is not clear. Some of these questions concerned information that the complainant considered the Council would hold and the Commissioner asked the Council to address those questions in its submission to him.

18. In its submission, the Council first noted that it considers the request to be a straightforward request, and that its application of section 21 was also straightforward. The Council confirmed that all of the requested information is accessible [to the complainant] by other means because it is published on the Council's public access website. It says that its officers have consistently relayed this to the complainant, and it has, in fact, conducted two internal reviews of the Council's response to the request.
19. Following the complaint to the Commissioner, the Council says it has re-visited the request but is unable to reverse or amend the Council's position. This is because the requested information is published on the Council's public access website and is therefore reasonably accessible by other means.
20. With regard to the complainant's questions, the Council went on to say that its Planning Department has confirmed that all documents relating to planning applications are published on the Council's public access system. The Council's Planning Department has an experienced team of administration staff who are responsible for processing planning applications and ensuring that all documents received in respect of an application are published on the public access system. The public access system is the means by which local authorities publish planning application information. The Council has confirmed that there would be no further information held elsewhere that it could search for.

Conclusion

21. The Commissioner notes that it is quite usual these days for a local authority to publish all the information relevant to each planning application on a dedicated website or portal, or on the planning section of its own website. The Commissioner appreciates that the complainant considers that published information about the planning application in question suggests to them that other information must be held. However, the Council in this case has reconsidered the complainant's request more than once, including as a result of their complaint to the Commissioner. And the Council has confirmed each time that all the information it holds that is relevant to the request is published on its website and that it holds no further relevant information. The Commissioner has not been presented with compelling evidence to suggest that that is not the case.
22. He has considered all the circumstances and the Commissioner finds that regulation 12(4)(a) is engaged because, on the balance of probabilities, the Council holds no further information within scope of the complainant's request.

Regulation 14 – refusal to disclose information

23. The Council considered this request under FOIA, but it is the EIR that actually apply to the requested information. Therefore, where the procedural requirements of the two pieces of legislation differ, it is inevitable that the Council will have failed to comply with the provisions of the EIR.
24. Under regulation 14(2) of the EIR a public authority's refusal of a request must be made as soon as possible and no later than 20 working days after the date of receipt of the request. Under regulation 14(3) the refusal must specify the reasons not to disclose the information requested, including any exception relied on under regulation 12(4).
25. In this case, the Council did not provide a refusal within the necessary timescale. Nor did its refusal cite the correct exception ie regulation 12(4)(a) of the EIR. The Council's refusal of the request therefore did not meet the requirements of regulation 14.

Right of appeal

26. 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

27. 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.
28. 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

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF