

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

### **Decision notice**

**Date:** 22 March 2023

**Public Authority:** Bar Hill Parish Council

**Address:** Hanover Close  
Bar Hill  
Cambridge  
CB23 8EH

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

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1. The complainant requested from Bar Hill Parish Council (the Council) information regarding conifer trees at Saxon Park. The Council provided the complainant with information – a copy of the Saxon Park Tree Survey, but with information redacted. The Council cited section 43(2) (commercial interests) of FOIA to the withheld information.
2. The Commissioner's decision is that the information is environmental, and the Council should have considered the request under the EIR on receipt of the request and not under FOIA. In view of this, the Commissioner has recorded a breach of regulation 14(3) (refusal notices) of the EIR.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
  - The Council must provide a substantive response to the request in accordance with its obligations under the EIR.
4. The Council must take this step 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**

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5. On 13 August 2022 the complainant wrote to the Council and requested information in the following terms:

“I believe a report has now been carried out regarding the conifer trees on Saxon way. I would like to request access to the report under the freedom of information act.”
6. On 22 August 2022 the Council acknowledged the request. It informed the complainant that the request would be discussed at the next council meeting and he would be informed of the outcome.
7. On 27 September 2022 the Council responded and provided the complainant with a copy of the Saxon Park Tree Survey but with two paragraphs redacted. The Council cited section 43(2) (commercial interest) of FOIA to withhold the information.
8. The complainant expressed his dissatisfaction with the redacted information within the Saxon Park Tree Survey, and on 3 October 2022 he asked the Council for an internal review. Specifically, its reasonings for the redactions and to consider making the information available.
9. The Council provided its internal review response and maintained its original position to rely on section 43(2) of FOIA to withhold some of the information. The Council explained to the complainant that in the “full Council meeting of 20 October 2022”, it was resolved to keep the redactions in the published version of the Saxon Park Tree Survey. The Council said “the information provided under the FOI request was redacted in accordance with the interpretation of the ICO requirements.”

## **Reasons for decision**

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### **Is the requested information environmental?**

10. 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..."
11. The requested information in this case concerns a survey report about conifer trees at a specific site in a village. The Commissioner is therefore satisfied that the information is environmental and falls under the definition of 'measures' given at regulation 2(1)(c) of the EIR.<sup>1</sup>

### **The Commissioner's position**

12. At the start of the Commissioner's investigation of this case, the Council was asked to provide him with the withheld information and its final reasoning as to why its handling of this request was compliant with FOIA. The Council provided the Commissioner with a copy of the original Saxon Park Tree Survey and stated the parts that had been redacted, along with its reasoning behind the redactions.
13. The Commissioner considered the Council's reasoning to be brief and therefore asked the Council to present him with further submissions for withholding (two paragraphs) of the information. The Council responded and supplied the Commissioner with a revised response, where it referred to regulation 12(5)(e) (confidentiality of commercial and industrial information) of the EIR to the withheld information.
14. Within its revised response to the Commissioner, the Council explained that it has on-going issues relating to subsidence within the village. It said "the impact of the tree roots on the adjoining property is an on-going concern within the Council." Further background information about these issues and justifications on the redacted information, were also provided by the Council to the Commissioner.

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<sup>1</sup> <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/regulation-2-1-what-is-environmental-information/>

15. The Commissioner acknowledges the Council's reasoning, however, it is not clear whether the Council wishes to rely on an exception under the EIR. The Council may wish to consider regulation 12(5)(b) (the course of justice) of the EIR in this instance.
16. The Council issued its refusal under FOIA and not the EIR, therefore, the Commissioner has found the Council in breach of regulation 14(3) of the EIR. This concerns a public authority's obligation to specify the EIR exception relied upon to withhold the requested environmental information.

### **Conclusion**

17. The Commissioner requires the Council to issue the complainant with a fresh response under the EIR.

## Right of appeal

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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: 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)

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

**Joanna Marshall**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**