

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

**Decision notice**

**Date:** 13 September 2023

**Public Authority:** North Kesteven District Council

**Address:** Kesteven Street  
Sleaford  
NG34 7EF

**Decision (including any steps ordered)**

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1. The complainant requested information about North Kesteven District Council's (the "council") association with UK100. The council disclosed information and withheld some personal data under the exemption in section 40(2) of the FOIA. It subsequently reconsidered the request under the EIR and disclosed additional information to the complainant.
2. The Commissioner's decision is that the council wrongly handled the request under the FOIA and breached regulation 5(1) and regulation 14 of the EIR and that it failed to disclose information relevant to the request in time and also breached regulation 5(2) and regulation 11(4).
3. The Commissioner does not require the council to take any steps.

## Request and response

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4. On 11 February 2023 the complainant submitted the following request to Kesteven District Council (the "council") :
  - "1. The exact monetary contributions that your council has made to UK 100 (<https://www.uk100.org/>) to date and expects to make in the future;
  2. All correspondence that your council has entered into with the above site owner and or with any other local or other authorities that are members or who subscribe to such site;
  3. All involvement of your council (and correspondence and discussions that it has entered into with any or (sic) party) on the 20 minute neighbourhood proposals;
  5. All involvement of your council in the installation anywhere in your council's area at any future time of face recognition cameras at what cost and where;
  6. All proposals if any to fine fossil fuel powered cars for entering any areas in the council's district or for exceeding any set mileage per day, week, month or year;
  7. All proposals as to the installation of any number of new number plate recognition cameras anywhere in your district at any point in the future, including how many, where and at what cost."
5. The council responded on 3 March 2023 and addressed some parts of the request.
6. On 4 March 2023 the complainant asked the council to carry out an internal review, directing it to provide the correspondence in part 2 of their request.
7. Following further correspondence the complainant clarified the specific information they were seeking in response to part 2 of their request on 17 March 2023.

## Scope of the case

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8. On 20 July 2023 the complainant contacted the Commissioner to complain about the council's handling of their request. Their complaint was that the council had failed to provide the information in part 2 of their request and failed to respond to their internal review request.
9. The Commissioner wrote to the council on 24 July 2023 and directed it to respond to the complainant's internal review request.
10. On 7 August 2023 the council provided the complainant with the outcome of its internal review and disclosed correspondence falling within the scope of part 2 of the request. It redacted some personal data from the disclosed information under section 40(2) of the FOIA. The council also withheld a report which was referenced in an email which formed part of the disclosed correspondence.
11. During the Commissioner's investigation the council reconsidered the request under the EIR and issued a new response to the complainant. This disclosed some previously redacted information and confirmed that, following reconsideration, the previously withheld report did not actually fall within the scope of the information requested. The Commissioner advised the complainant that, as the report did not fall within the scope of their request he would exclude this from his investigation.
12. In relation to personal data redacted from the disclosed information, the complainant agreed that, if it was the case that redactions only related to junior council employees or non-public authority employees they would be content for this information to be excluded from their complaint. Based on the council's submissions the Commissioner is satisfied that the redacted information solely consists of the personal data of individuals falling within the categories above. He has, therefore, excluded this information from the scope of this decision notice.
13. The Commissioner has considered the council's compliance with the statutory timeframes for responding. He has also considered the complainant's concerns that the council might have intentionally delayed the disclosure of information and that, in doing so, it had committed an offence under the terms of regulation 19 of the EIR (equivalent to section 77 of the FOIA).

## **Reasons for decision**

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### **Access regime**

14. During the course of his investigation the Commissioner advised the council that he considered the requested information fell to be considered under the EIR.
15. In this case the requested information relates to environmental policies. In keeping with regulation 2(1)(c), the Commissioner considers, therefore, that the information can be considered to be a measure affecting or likely to affect the environment or a measure designed to protect the environment. This is in accordance with the decision of the Information Tribunal in the case of Kirkaldie v IC and Thanet District Council (EA/2006/001) ("Kirkaldie").
16. In view of this, the Commissioner has concluded that the council wrongly (initially) handled the request under the FOIA and breached regulation 5(1) of the EIR. As the council subsequently corrected this the Commissioner does not require the council to take any steps in this regard.

### **Regulation 14 – refusal to disclose information**

17. In the circumstances of this case the Commissioner has found that although the council originally considered this request under FOIA 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.
18. In these circumstances the Commissioner believes that it is appropriate to find that the council breached regulation 14(1) of EIR which requires a public authority that refuses a request for information to specify, within 20 working days, the exceptions upon which it is relying. This is because the refusal notice which the council issued (and its internal review) failed to cite any exception contained within the EIR as the council actually dealt with the request under FOIA.

### **Regulation 5(2) - Time for compliance**

19. Regulation 5(1) states:

"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.

20. Regulation 5(2) states:

“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.”

21. In this case the council failed to disclose some of the requested information until some 6 months after the date of the original request.

22. The Commissioner, therefore, finds that the council breached regulation 5(2).

### **Regulation 11 – internal review**

23. Regulation 11 sets out the responsibilities of public authorities in relation to complaints about the handling of requests (“internal reviews”)

24. Regulation 11(4) states:

“A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the date of receipt of the representations.”

25. In this case the complainant requested an internal review on 4 March 2023 and the council sent its internal review response on 7 August 2023.

26. The Commissioner has, therefore, concluded that the council breached regulation 11(4).

## Other matters

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27. Although they do not form part of this decision notice the Commissioner notes the following matters.

### Regulation 19

28. Regulation 18(4) clarifies the Commissioner's role in relation to the issuing of decision notices under the EIR and, with reference to the equivalent duty under section 50 of the FOIA (the "Act"), it states:

"For the purposes of the application of the enforcement and appeals provisions of the Act—

(a) for any reference to—

(i) "this Act" there shall be substituted a reference to "these Regulations"; and

(ii) "Part I" there shall be substituted a reference to "Parts 2 and 3 of these Regulations"

29. Regulation 19 falls within part 5 of the EIR so, as with section 77 of the FOIA, it is excluded from scope of matters the Commissioner can formally consider within a decision notice. However, the Commissioner is entitled to comment on these matters here.

30. Regulation 19(1) states:

"Where—

(a) a request for environmental information has been made to a public authority under regulation 5; and

(b) the applicant would have been entitled (subject to payment of any charge) to that information in accordance with that regulation, any person to whom this paragraph applies is guilty of an offence if he alters, defaces, blocks, erases, destroys or conceals any record held by the public authority, with the intention of preventing the disclosure by that authority of all, or any part, of the information to which the applicant would have been entitled."

31. The complainant has alleged that, in failing to respond to their request within the statutory time limit, the council intentionally blocked access to information to which they were entitled and committed an offence under regulation 19(1).

32. In accordance with his procedures the Commissioner provided the relevant evidence to his Criminal Investigations Team ("CRIT") for its assessment. CRIT confirmed that it considered that there was insufficient evidence of a criminal offence to warrant further action.
33. Whilst the Commissioner has concluded there is insufficient evidence of a regulation 19 offence in this case he is concerned that the council's response to the request was subject to significant delay and that it had to be directed to provide outstanding information.
34. The Commissioner expects that the council's future handling of requests will comply with the EIR.

## Right of appeal

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35. 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](mailto:grc@justice.gov.uk)

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

36. 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.
37. 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 .....**

**Christopher Williams**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**