

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

Date: 8 January 2024

Public Authority: St Helens Borough Council
Address: Town Hall
Corporation Street
St Helens
Merseyside
WA10 1HP

Decision (including any steps ordered)

1. The complainant has asked a series of questions about St Helens Borough Council's ('the Council') decisions regarding a planning application. The Council responded with general explanations, but these responses did not provide the information that had actually been requested.
2. The Commissioner's decision is that the Council did not deal with the request in accordance with regulation 5(1) of the EIR. He also finds that the Council breached regulation 5(2) of the EIR, by failing to comply with regulation 5(1) within 20 working days. Furthermore, by taking 56 working days to provide the outcome of the internal review, it breached regulation 11(4) of the EIR. It also issued a refusal notice which did not comply with regulations 14(2) (timeliness of refusal notice) and (3) (reasons for refusal) of the EIR.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to parts (1) – (5) of the request, which complies with regulation 5(1) of the EIR, ensuring that all information held by the Council which falls within scope has been identified and considered for disclosure.

- If any of the requested information is to be withheld, or is not held, the Council must issue a refusal notice which complies with regulation 14 of the EIR, citing valid exceptions for refusing to disclose the information.
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 the Act and may be dealt with as a contempt of court.

Request and response

5. On 26 June 2023, the complainant wrote to the Council and requested information in the following terms:

“This request relates to a piece of land on [location redacted], which is owned by [name redacted] (see attached files for location). Part of the land was allocated to strategic housing site 4HA at the Cabinet Meeting on 12 December 2018, despite the fact that it had not been identified as safeguarded land for housing development at the earlier Preferred Options stage in 2016 and was therefore not subject to the public consultation exercise. I would like the Council to answer the following questions:

1. Who made the decision to include [name redacted]'s land in site 4HA and when was this decision made?
 2. Why was the land included when it had not been part of the Preferred Options?
 3. Is the decision to include the land documented and, if so, is the documentation publicly available?
 4. Why was a small triangle of [name redacted]'s land, adjacent to the [location redacted] development, excluded from the allocation?
 5. Were Cabinet Members informed that the land had not previously been included in the Preferred Options and had not been subject to public consultation?”
6. The Council responded on 28 July 2023, stating:
- “Answers to your questions are as follows:”.

7. In response to parts (1) and (2) of the request, the Council commented on the general process followed in determining planning applications. For part (3), it said that "relevant" Cabinet and Council reports were available on the Council's website. For part (4), it responded "Unknown". For part (5), it described the information that was available to Cabinet Members at the Local Plan Submission Draft stage.
8. The complainant requested an internal review on 30 July 2023. He felt that the Council's responses to the questions were general and did not provide the specific information he had asked for. He also complained about the delay in responding to the request.
9. The Council provided the internal review outcome on 18 October 2023. It apologised for the delay in responding to the request. The outcome of its reconsideration of each part of the request was as follows:
 - (1) It maintained its original response, adding that: "...Council decisions are collective not individual. Therefore, it is not possible to name any individual."
 - (2) It maintained its original response.
 - (3) It maintained its original response.
 - (4) It revised its position to "information not held".
 - (5) It maintained its original response.
10. For each part of the request, except part (4), it also said:

"From discussions with the relevant officer and review of internal and publicly available documentation, I can confirm that the response you have received is factually accurate. There are no other documented decisions on this issue other than those referred to in the initial response."

Scope of the case

11. The complainant contacted the Commissioner on 24 October 2023, to complain about the way his request for information had been handled. He considered the Council's responses were neither adequate nor accurate. He believed that information in an appeal document he had in his possession¹ suggested that the Council may hold recorded

¹ issued under the Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009, APP/2023/0015/REF

information which fell within the scope of the request, which should be considered for disclosure.

12. The analysis below considers whether the Council's handling of the request complied with the obligations under regulations 5, 11 and 14 of the EIR, to make environmental information available, in a timely fashion.

Reasons for decision

Is the requested information environmental?

13. Regulation 2(1)(c) of the EIR states that environmental information includes information on:

"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)...as well as measures or activities designed to protect those elements".

14. The Council's internal review cited FOIA as the applicable access regime. However, the Commissioner notes that the request is on a measure (planning) likely to affect the elements of the environment (regulation 2(1)(c) of the EIR). For procedural reasons, he has therefore assessed this case under the EIR.

Regulation 5 - Duty to provide environmental information

15. Regulation 5(1) of the EIR states:

"...a public authority that holds environmental information shall make it available on request."

16. 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."

17. The Commissioner's guidance on responding to requests under the EIR², states:

"The Regulations say that when you receive a request, you should:

- always respond in writing, regardless of whether the request was made verbally or in writing;
- tell the requester whether you hold any information; and
- make that information available, unless an exception applies."

18. The guidance clarifies that:

"If you are refusing all or part of the request, you still have to say what information you hold."

19. On responding to specific questions under the EIR, the guidance states:

"You will often be asked 'how', 'why' and 'if' questions about the work you do. Such questions will be valid requests for information under the Regulations...If you hold recorded information that answers the question, you should provide it in response to the request. You do not have to provide information if you do not already hold it in recorded form.

We recognise that you may initially respond to questions informally, but we will expect you to consider your obligations under the Regulations as soon as it becomes clear that the requester is dissatisfied with this approach.

Ultimately, if there is a complaint to the ICO, the Commissioner will make their decision based on whether recorded information is held and has been provided."

20. In this case, for parts (1), (2) and (5) of the request, the Commissioner notes that the Council did not:

- confirm whether or not it holds the information described in the requests;
- disclose such information as it does hold; and/or

² <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/guide-to-the-environmental-information-regulations/receiving-a-request/>

- cite non-disclosure exceptions to withhold any information that it does hold.
21. As regards part (1), if recorded information is held which contains the names of officers/Members who made the decision, albeit collectively, that information would fall within scope of the request and should be disclosed unless a valid non-disclosure exception under regulation 12 or 13 applies.
 22. For part (3) of the request, the Council did not properly identify or disclose the information it said it held. The Commissioner would expect it to provide direct weblinks to any information it was proposing to disclose by way of its website.
 23. For part (4) of the request, the Council failed to identify to the complainant the relevant regulation it was relying on to explain why no information could be disclosed³.
 24. Furthermore, and as mentioned in paragraph 11, the complainant has referred the Commissioner to a Local Planning Authority appeal document. The document makes reference to reasons underpinning particular planning decisions, which suggests that the Council may hold some recorded information falling within the scope of the request⁴.
 25. In light of all the above, the Commissioner requires the Council to take the steps specified in paragraph 3, above.
 26. The Commissioner also finds that the Council breached regulation 5(2), by failing to comply with regulation 5(1) within 20 working days. By taking 56 working days to provide the outcome of the internal review, it breached regulation 11(4) of the EIR, which requires this to be done within 40 working days. It also issued a refusal notice which did not comply with regulations 14(2) (timeliness of refusal notice) and (3) (reasons for refusal) of the EIR.
 27. The Commissioner has made a note of these breaches, for monitoring purposes.

³ Regulation 12(4)(a) being the exception which concerns requests for information which is not held by the public authority

⁴ See in particular, paragraphs 6.50, 6.58 and 6.69

Right of appeal

28. 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

29. 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.

30. 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

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