

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

Decision notice

Date: 13 May 2024

Public Authority: Tees Valley Combined Authority
Address: Teesside Airport Business Suite
Teesside International Airport
Darlington
DL2 1NJ

Decision

1. The complainant asked for information about two consortia and presentations made to Tees Valley Combined Authority (the TVCA). The TVCA answered the request explaining that information was not held by them, and relevant papers would be held by Teesside International Airport Board (TIA) and are not subject to FOIA.
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 FOIA and that, on the balance of probabilities, the TVCA did not hold information in scope of the request and regulation 12(4)(a) of the EIR is applicable.
3. The Commissioner does not require any steps to be taken as a result of this decision.

Request and response

4. The complainant made the following information request to the TVCA on 2 November 2023:

"I refer to discussion on the Teesside Airport Southside Business Park joint venture as it appears in minutes of Darlington Council Cabinet meeting, March 2020. This refers to there being presentations made to the TVCA by two consortia.

1. Please give the date when the two consortia made presentations to the TVCA.
 2. Give the names of those involved in the decision to appoint the consortium headed by Chris Musgrave and Martin Corney.
 3. Give the name of the other consortium, and the names of those who delivered the presentation.
 4. Give the date on which the decision to award to Mr Corney and Mr Musgrave was made.
 5. State the selection criteria that resulted in Mr Corney and Mr Musgrave's being preferred.
 6. Give the names of any other parties who expressed an interest in the venture, whose bids were rejected prior to the invitations to present to TVCA officers.
5. The TVCA responded on 30 November 2023 and explained that as it performs secretariat duties for the TIA it does not hold the relevant papers. These are held by TIA and are not subject to the Freedom of Information Act 2000.
6. On 1 December 2023, the complainant set out their arguments why they considered the TVCA should hold the requested information and requested an internal review.
7. The TVCA's internal review of 22 December 2023 further explained its position and upheld the original response.

Reasons for decision

Regulations 2(1)-definition of environmental information

8. 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...”

9. 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.
10. The Commissioner has produced guidance to assist public authorities and applicants in identifying environmental information¹. 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.
11. In relation to the interpretation of regulation 2(1)(c) of the EIR, the Commissioner’s guidance states “the regulation gives ‘such as’ examples of measures or administrative measures; policies, legislation, plans, programmes, and environmental agreements. This covers a broad range and includes the steps you take to ensure something happens and the

¹ [Regulation 2\(1\) - What is environmental information? | ICO](#)

methods, processes, or instruments you use to implement the measure."²

12. The Commissioner's view is therefore that information pertaining to the potential future use of land would include information on measures and/or activities which are likely to affect the elements and factors of the environment.
13. 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.
14. The Commissioner understands that the requester in this case is asking for specific information about the consortia as well as those involved in the decision-making process.
15. The complainant observed that TVCA involvement went well beyond providing administrative support. They referred to evidence contained in a document "TVCA Cabinet Agenda Papers³ and "The Partnership Agreement" specifically paragraphs 3 and 9 showing key matters reserved by TVCA. The reference on screen 42 of the same document to "a local partner..." also indicates that the TVCA had more involvement in the selection of the successful joint venture partner than simply the "secretariat duties" referred to.
16. Given the considerable involvement of TVCA in the development of the joint venture partnership, the complainant believed it could be held accountable for its involvement in the selection process.
17. The Commissioner has considered the point that TVCA's involvement in, and oversight of, the joint venture goes beyond simple secretarial and administrative duties for TIA, it may be expected some information would be held for the public authority's own purposes. However, the Commissioner's role is to determine whether the TVCA actually holds the requested information and has complied with the request under the EIR.
18. During the Commissioner's investigation the TVCA explained that:

² [Regulation 2\(1\) - What is environmental information? | ICO](#)

³ <https://teesvalley-ca.gov.uk/about/wp-content/uploads/sites/2/2023/05/TVCA-Cabinet-Agenda-Papers-20.12.19.pdf>

“the procurement activity for the Joint Venture Partner referred to by the Requestor was carried out by Teesside International Airport Limited, and not the Tees Valley Combined Authority – to whom the request for information was made. Teesside International Airport Limited is a Limited Company and therefore a separate legal entity to the Tees Valley Combined Authority. It was Teesside International Airport Limited that carried out the procurement activity and it will therefore be that entity that holds the information requested. The Tees Valley Combined Authority only holds the information it requested and required in order to satisfy itself that the loan it was proposing to make to Teesside International Airport Limited was a suitable investment.”

19. The TVCA further explained that:

“Whilst there is a link between the Tees Valley Combined Authority and Teesside International Airport Limited as a shareholder, in terms of the loan facility, it acted in the same way as with any other recipient of funding, by providing it with a Funding Agreement. The requestor appears to be conflating the Tees Valley Combined Authority’s involvement as funder, as involvement in the Joint Venture referred to, which is not the case.”

20. It also stated that relevant searches were conducted by senior officers of TVCA in order to confirm no information in scope of the request was held.
21. It is not the Commissioner’s responsibility to determine whether a public authority should hold information, or whether the information it does hold is adequate for the purpose it serves. His only role is to determine whether the public authority does, as a matter of fact, hold information in scope of the request in a recorded form.
22. The Commissioner is not required to prove beyond doubt that the TVCA do or do not hold information but can only make a decision based on the civil standard of the “balance of probabilities” that information within the scope of the request is more likely than not held.
23. Therefore, the Commissioner’s decision is that on the balance of probabilities, the TVCA did not hold any information in scope of the request and regulation 12(4)(a) is applicable.

Right of appeal

24. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

25. 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.
26. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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