

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

Decision notice

Date: 23 May 2012

Public Authority: Chelmsford Borough Council

Address: Duke Street
Chelmsford
Essex
CM1 1JE

Decision (including any steps ordered)

1. The complainant requested information from Chelmsford Borough Council ("the council") regarding the rental of Hylands Park for the V Festival each year. The council refused to provide the information on the basis that it was exempt under section 43 of the Freedom of Information Act 2000 ("the FOIA").
2. The Commissioner's decision is that the exemption has not been correctly applied because the council should have handled the request under the terms of the Environmental Information Regulations 2004 ("the EIR").
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Reconsider the request under the terms of the EIR and, if the council wishes to refuse to provide the information, cite an appropriate exception and provide full rationale for doing so.
4. The public authority 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 (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 19 July 2011, the complainant requested information from Chelmsford Borough Council ("the council") in the following terms:

"1) Please could you advise how and where on Chelmsford Borough Council's website I can locate the Audited Accounts of the Council?

2) Please could you tell me how much the council receives in monies for the rental of Hylands Park for the purpose of the V Festival? Could you please advise the rental fee received each year since the Festival first played at Hylands Park. Furthermore, please advise me how the council then spends this rental fee received from Maztec".
6. The council responded on 25 October 2011 and provided some information. However, the council said that it was unable to provide the rental fees for the use of Hylands Park because that information is exempt under section 43 of the Freedom of Information Act 2000 ("the FOIA").
7. The complainant requested an internal review on 7 November 2011.
8. The council completed its internal review on 29 November 2011. It said that it wished to maintain its position.

Scope of the case

9. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He specifically asked the Commissioner to consider whether the council had correctly refused to provide the information.

Reasons for decision

Regulation 2 – interpretation of "environmental information"

10. The Commissioner decided that the council had not correctly refused the request because it should have handled the request under the terms of the EIR rather than the FOIA.
11. Information that meets the definition of "environmental information" under regulation 2 of the EIR must be considered under the EIR rather than the FOIA. The EIR provide separate information access rights. According to regulation 2(1)(c) of the EIR, information will be

environmental if it relates to activities that affect or which are likely to affect the elements and factors of the environment listed in regulation 2. One element is the land and one factor is noise. Given that the information relates to the V Festival, it is the Commissioner's view that the information is environmental.

12. The council explained to the Commissioner that it did not agree with the Commissioner's view. It said the following:

"We of course accept that the V Festival per se has an impact on the environment. However the applicant's request was directed at obtaining financial information with respect to the contract that was entered into between Clemsford Council and Maztec. Our position remains that this is very clearly a request for specific information concerning a commercial arrangement between ourselves and another party, and thus does not, even allowing for a broad interpretation of EIR, fall within its remit".

13. The council also listed some previous decisions made by the Commissioner which the council considered would contradict the position being taken by the Commissioner in the present case.

14. The Commissioner has published detailed guidance on the interpretation of the EIR. For ease of reference, the link to that guidance is here:

<http://www.ico.gov.uk/foikb/SectionsRegulations/FOIPolicyRegulation2.htm>

15. The guidance materials make it clear that the Commissioner's approach to considering cases under the EIR has evolved over time. Moreover, whether an information request should be dealt with under the EIR is a matter of judgement and also depends on the facts of each particular case. In any event, the Commissioner would like to make clear he has made his decision based on the facts of the present case and in the light of the Commissioner's published guidance referred to above. The Commissioner considers that the view he has taken in this case is in line with his published guidance on the subject.

16. The Commissioner understands that the council's point of view is that because the information requested relates to the financial aspects of the matter that means that the information falls outside the scope of the EIR. The Commissioner would like to make clear in this case that his position is that it is usually enough that the information relates to a matter affecting the elements or factors of the environment (and the council accepts that the V Festival does affect the environment). It does not have to be directly about the land or some other element or

factor to be considered environmental. The purpose of the EIR is to assist members of the public in understanding and having more involvement in decisions and actions taken by public authorities that affect the environment. It is therefore important in the Commissioner's view that the legislation is interpreted in a fairly broad way, and that means that it should cover financial arrangements in relation to those activities as well, as that information would help in the aim of encouraging more active public participation in a decision affecting the environment.

Right of appeal

17. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

18. 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.
19. 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

**Lisa Adshead
Group Manager
Information Commissioner's Office
Wycliffe House
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SK9 5AF**