

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 23 September 2013

Public Authority: City of York Council

Address: West Offices
Station Rise
York
YO1 6GA

Decision (including any steps ordered)

1. The complainant has requested information relating to a planning application, to be provided to her either electronically or in hard copy. York City Council (council) initially refused to provide the information to the complainant relying on section 21(1) of the Freedom of Information Act 2000 (FOIA). Following an internal review the council changed its decision to provide the information. However, the complainant is not satisfied that all of the information has been provided within the scope of the request.
2. The Commissioner considers that this request is a request for information under the EIR.
3. The Commissioner's decision is that the council has not provided all of the information to the complainant within the scope of the request and has breached regulation 5(1) of the EIR. The Commissioner has also considered the council has breached the following; regulation 5(2) of the EIR by not responding to the complainant's information request within 20 working days, regulation 9(1) by not providing reasonable advice and assistance, and regulation 11 5(a) and (c) by not complying fully with the internal review procedure.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Make the requested information available in the format requested by the complainant in the original request.

- Comply with regulation 11(5)(a) and regulation 11(5)(c) of the EIR.
5. 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 pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

6. On 6 October 2013, the complainant wrote to the council and requested information in the following terms:

"Could you please provide me with a copy of the full planning application (and any updates, amendments, or conditions) and the documents granting the planning permissions for your ref: 05/02251/FUL? For the sake of clarity the application relates to the "Conversion of 5th floor offices (Class B1) to 8 x apartments (5x 1 bedroomed and 3 x 2 bedroomed) to include change of use on part of external pedestrian deck to provide additional car parking | Suites 4 And 5 Part Rowntree Wharf Navigation Road York YO1 9XA". I am happy for the information to be provided in either hard copy or electric format."

7. The council responded on 8 November 2012. It stated that the information is available to view at their offices and advised the complainant on how to arrange to come in and look at the file to make copies.
8. The complainant advised the council that she was unhappy with the response as no exemption was applied with its response not to send the information.
9. The council responded on the 13 November 2012 advising that the information is exempt under section 21(1) of the FOIA, information accessible by other means.
10. The complainant requested an internal review on 15 November 2012 advising the council that she was unable to get in to the office during the hours available for the foreseeable future to view the documents and asked for the information to be emailed to her.
11. Following an internal review the council contacted the complainant on 21 December 2012. It stated that the information requested was now being scanned and indexed so that it could be viewed via public access, which meant that the documents could be viewed online via the planning

portal on the council's website, and that it would contact the complainant again to advise when this had been done.

12. The council contacted the complainant on the 27 December 2012 to advise that the information was now ready to view online and provided a link to the relevant web page.
13. The complainant contacted the council on 28 December 2012 stating that a number of documents appeared to be missing. She advised that when reading some documents, reference is made to attachments, but the attached documents were not there.
14. The council responded stating that it would cross reference the original documents with what had been put online, and asked the complainant if any missing documents were of particular interest so it could concentrate on them first. The complainant advised which document would be useful to get first but did advise that all aspects of the application documents were of interest.
15. On 14 January 2013 the council supplied the complainant with an attachment for the document that she had requested to get first. The council advised the complainant at the time of sending the attachment that it was moving offices on the 1 February 2013 and that it would be unlikely to be able to investigate further until after that date.

Scope of the case

16. The complainant contacted the Commissioner on 7 February 2013 to complain about the way her request for information had been handled. She stated that the council had not provided all of the information within the scope of the request.
17. The Commissioner contacted the council asking it to provide the remaining information. The council responded stating that all the information had been made available to the complainant.
18. The complainant is not satisfied with the council's response that all the information was made available to her. She has also stated that she has not been provided with a copy of the internal review.
19. The Commissioner considers that the scope of the case is to determine whether all of the information has been provided to the complainant by the council and whether the council has correctly complied with the procedure of an internal review under EIR.

Reasons for decision

Regulation 2 – Environmental information

20. The council has stated that it is of the opinion that in general, planning information is not environmental but occasionally might be. It does not concern the air, water etc; it is not about measures to protect them. Planning is in general about the convenience and comfort of humans, and is done under legislation that long predates any concern about the environment.
21. The Commissioner has considered whether the information requested by the complainant is environmental information as defined by the EIR. The Commissioner considers that the information requested falls within regulation 2(1)(c): information on:

"measures (including administrative measure), 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 these elements"

22. Information about a plan or a measure or an activity that affects or is likely to affect the elements of the environment is environmental information. The Commissioner therefore considers the information requested by the complainant to be environmental information, because the information relates to a planning application.

Regulation 5

23. Regulation 5 provides that a public authority should make environmental information available on request within 20 working days of receipt of a request. Part of the requirement of this regulation is that, upon receipt of a request, a public authority should identify all the information it holds that falls within the scope of the request. This analysis addresses this requirement, as well as the obligation to make information available within 20 working days of the receipt of the request.
24. As part of the Commissioner's investigation, the complainant was asked to provide him with evidence from the online portal by highlighting which documents referred to other documents that were not available to view. However, the complainant came back to the Commissioner to advise that, when she went to look at the online portal's documents again, the amount of documents now available to view had reduced from 73 (which the complaint states was an incomplete amount) down to 29 documents. The complainant states there are now even fewer documents than was previously available back in January.

25. The Commissioner queried the council on this above discrepancy along with its questions to determine if all the information had been supplied to the complainant.
26. From reviewing the correspondence between the council and the complainant and from the council's response to the questions asked by the Commissioner, the Commissioner noted the following. The council advised the complainant that the information had been made available for her to view on its online portal. The complainant advised the council that there appeared to be documents missing, and listed one of the missing documents, at the council's request. The council provided that missing document to the complainant by way of an email attachment and stated the following:

"Please find a copy of the decision notice attached with the conditions as requested. As you may know the Council are moving into new offices on the 1st of February and unfortunately it is unlikely that I will be able to investigate further until after that date."

27. This email was also provided to the Commissioner by the council as way of showing that they had now provided the complainant with all the information.
28. The Commissioner considers this email to be misleading to the complainant as it clearly states that further investigations were to continue after February. No subsequent emails were sent to the complainant to advise either, that was all the information held by the council, or any missing documents had now been added to the case.
29. It was during the Commissioner's investigation that the council confirmed to him, on the 14 June 2013, that all the information is available online for the complainant. It was after this confirmation from the council, that the Commissioner asked the complainant to provide evidence to him of which documents were missing, and on the 6 July 2013 the complainant, having checked the online portal, found that there were now only 29 documents available to view, down from the 73 documents.
30. The council has advised the Commissioner that all relevant documents are visible to the public on their online portal, but not all at the same time. It maintains that everything remains stored in the underlying database and special arrangements were made at the time to re-open it so that the documents would be visible for the complainant.
31. The council advised that it does not keep all of its published information on its website indefinitely and stated that the complainant was expected

to make her own copies from the online portal. This would explain why there are now only the 29 available documents.

32. The Commissioner has not been provided with any evidence from the council which shows that the complainant was made aware that the information would be taken down after a period of time, and that she should make her own copies. The Commissioner would not expect the complainant to know this would be the case with the documents made available online, especially when she was under the impression that the council were going to get back in touch with her after February, once they had made further investigations into the missing documents.
33. As the council have made no further arguments to show that all the information requested was indeed provided on the online portal, and from reading the communications between the council and the complainant, and also considering that there are now less documents now than back in January (which the council have not disputed). The Commissioner considers that on the balance of probabilities, the council has not provided the complainant with all of the requested information.
34. The Commissioner therefore finds that the council has breached regulation 5 on two parts. Regulation 5(1) of the EIR, as it failed to respond to the complainant's information request within 20 working days and regulation 5(2), by not making all the information available to the complainant.

Regulation 9 – Advice and assistance

35. Regulation 9 states that "*A public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so...*"
36. The Commissioner finds the council has breached regulation 9(1) of the EIR, by not advising the complainant to make copies of the information that was made available on the online portal because the information is removed after a period of time. As this resulted in further confusion to the complainant.
37. The council has stated in its latest correspondence to the Commissioner that it is willing to display the documents again to allow the complainant to be able to make her own copies.

Regulation 11 of EIR – request for an internal review

38. The complainant has stated that she has not been provided with a copy of the internal review and has specifically asked the Commissioner to consider if there has been a breach under regulation 11, and whether the council should provide her with a copy.

39. The Commissioner considers that the council did conduct an internal review, as it changed its decision not to rely on section 21(1) of the FOIA. The council changed its decision within the required 40 working days.
40. However, the Commissioner considers that the council breached regulation 11(5)(a) and (c) of the EIR. Regulation 11(5) states;

"Where the public authority decides that it has failed to comply with these Regulations in relation to the request, the notification under paragraph (4) shall include a statement of-

(a) The failure to comply

(c) the period within which that action is to be taken."

Right of appeal

41. 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

42. 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.
43. 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

Andrew White
Group Manager – Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF