

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 27 August 2014

Public Authority: Wirral Metropolitan Borough Council
Address: Town Hall
Brighton Street
Wallasey CH44 8ED

Decision (including any steps ordered)

1. The complainant requested information about costs associated with bulk lamp changes. Wirral Metropolitan Borough Council ('the Council') released some information within the scope of the request and said it did not hold the remainder.
2. The Commissioner has decided that the Council has complied with its obligations under regulation 12(4)(a) of the EIR and does not require it to take any further action.

Request and response

3. On 11 February 2014, the complainant wrote to Wirral Metropolitan Borough Council and requested information in the following terms:

"As part of the council's Street Lighting maintenance regime, please indicate how much the council has spent on bulk lamp changes over the last FIVE years.

Please break this down into annual totals for financial years ENDING (paid to any contractor) as follows:

*year ending 2009
year ending 2010
year ending 2011
year ending 2012*

*year ending 2013
(part) year ending 2014*

*For each financial period, please break totals down further into
cost of works / materials for:*

*labour
lamps
lantern cleaning
traffic management
photocells
all other applicable / relevant cost codes"*

4. The Council responded on 17 January. It provided some information within the scope of the request – the annual totals - and denied holding the remainder.
5. The Council sent the complainant the outcome of its internal review on 20 March; it upheld its original position.
6. Following intervention from the Commissioner, the Council advised the complainant that it had amended its initial response to the request and had now considered it under the Environmental Information Regulations. It said it did not hold information in relation to the second part of the request – a breakdown of the annual totals.

Scope of the case

7. The complainant had contacted the Commissioner on 20 March 2014 to complain about the way their request for information had been handled.
8. The Commissioner has focussed his investigation on whether the Council has complied with regulation 12(4)(a) of the EIR in its handling of the request.

Reasons for decision

9. Regulation 12(4)(a) of the EIR says a public authority may refuse to disclose information to the extent that it does not hold that information at the time of an applicant's request.
10. In considering cases such as this, the Commissioner, in accordance with a number of First Tier Tribunal decisions, applies the civil standard of the balance of probabilities. To reach a decision on this the

Commissioner has considered the context of the case, the nature of the requested information, the authority's responses, the arguments provided by the complainant and any evidence to suggest that the information in question is held.

11. The Council has told the complainant in this case that under the contractual arrangements that it entered into, the rates and prices entered into the Schedule of Rates were the full and inclusive value of the work, and included a range of detailed components. The annual total figures it had released to the complainant include the individual items and components that the complainant had requested in the second element of their request. The Council told the complainant that it does not hold this particular information separately.
12. The complainant said they could not accept that the council is unaware of the breakdown totals and argued that this implies a worrying degree of carelessness and lack of oversight on the part of the contract issuing body. They asked the Council to use its resources and best endeavours to track down the appropriate totals and costs.
13. However the Commissioner can only consider what information is held and not what the complainant considers should be held. Based on the Council's responses he is prepared to accept the Council's explanation about why the information is not held.
14. The Commissioner considers that, on the balance of probabilities, the Council has provided the complainant with all the relevant information that it holds and has therefore met its obligations under regulation 12(4).
15. Technically regulation 12(1)(b) of the EIR requires that all exceptions, including regulation 12(4)(a), are subjected to a public interest test. However, it is not possible for the Commissioner to do this given his finding that no further relevant information, other than that now disclosed to the complainant, is held to which the public interest could apply.

Right of appeal

16. 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@hmcts.gsi.gov.uk

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

17. 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.
18. 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

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF