

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

**Decision notice**

**Date:** 9 July 2015

**Public Authority:** Bristol City Council  
**Address:** City Hall  
College Green  
Bristol  
BS1 5TR

**Decision (including any steps ordered)**

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1. The complainant requested information from Bristol City Council ("the council") relating to planning matters. The council said that the information was already available on its website. It subsequently cited the exemption under section 21 of the Freedom of Information Act 2000 ("the FOIA") and said that some of the information requested was not held. The Information Commissioner ("the Commissioner") decided that the requests should have been considered under the Environmental Information Regulations 2004 ("the EIR"). The Commissioner found that information had been made available on the council's website and that there was no further information falling within the scope of the requests. The Commissioner does not require any steps to be taken.

**Request and response**

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2. On 5 November 2014, the complainant requested information from the council in the following terms:

*"Please confirm date of rev plans and decision date ref plan 14/03953/h why were objections disregarded to size of garage to accomadate off street parking. Would granting form precedent to others in pynne close and new build to 14/01992/f at cul de sac t junction? Would this be a highway and safety issue for motorists and predestrians. Did the case officer and line manager grant this unconventionally as a two storey side extension or is this application deemed acceptable in a narrow cul de*

*sac? Please send me paper foi act 2000 request 5<sup>th</sup> November, 2014 to my home address completed on this form [sic]"*

3. The council responded on 6 November 2014 and said that information relating to the relevant planning application was already in the public domain and can be viewed on the council's website. It provided a link and said that it wished to highlight the planning officer's report.
4. On 10 November 2014, the complainant requested information from the council in the following terms:

*"Request under eir 2004 19 pynne close, stockwood Bristol, Bs14 8qw planning ref@ 1403959h Dated 10 November, 2014..."*

*Further the granting and approval of the above am making a request under the subject act above whether the approval dated 24<sup>th</sup> October, 2014 in pynne close build and size of garage to the two storey side extension would form precedent to other similar project builds pending consideration and future submissions for consideration being approved and granted and resulting in rise of highway issues and being harmful to the cul de sac, environment, etc...*

*Am requesting you reply in paper format to my name above in paper format [sic]"*

5. The council responded on 11 November 2014. It referred to the response it had already provided on 6 November 2014 and reiterated that this information was available on its website.
6. The complainant asked for an internal review on 13 November 2014.
7. The council completed an internal review on 14 November 2014. It said that it should have cited the exemption under section 21 of the FOIA. Section 21 provides an exemption from disclosure under the FOIA when the information requested is already reasonably accessible by other means. The council said this applies in relation to information about planning applications. The council highlighted that the complainant appeared to be seeking opinions on planning matters and this information is not held in a recorded format by the council.

## **Scope of the case**

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8. The complainant made an eligible complaint to the Commissioner on 10 February 2015. The Commissioner subsequently clarified that the issues the complainant wished the Commissioner to consider were as follows:

- Whether the council correctly refused to provide the information she requested by stating that it was either already publicly available or not held.
- Issues regarding the council's internal review. In particular, the complainant complained that the council treated her enquiry to know who was authorised to conduct the review and the timescale involved as a further request for information, which it responded to at a later stage on 18 December 2014, following the actual internal review on 13 November 2014. She also complained that it took the council too long to complete its internal review. Only the latter issue relates to a breach under the legislation. The other issue raised has been considered in the Other Matters section at the end of this notice.
- For clarity, the Commissioner decided that the requests should have been considered under the terms of the EIR rather than the FOIA and therefore the exemption under section 21 could not apply. However, the Commissioner was still able to consider the concerns about whether the council had responded appropriately to the requests.

## **Reasons for decision**

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### **The EIR**

9. The council did not consider these requests under the EIR. However, the Commissioner has decided that the information requested was "environmental". Regulation 2(1)(c) of the EIR provides that any information relating to activities or plans affecting or likely to affect the elements or factors of the environment will be environmental information for the purposes of the EIR. In this case, the requested information relates to planning applications which would clearly have an impact on the land, which brings the requests under the terms of the EIR.

### **Regulation 5(1)**

10. Regulation 5(1) of the EIR provides a general right of access to recorded environmental information held by public authorities. Public authorities should make environmental information within 20 working days unless a valid exception applies.
11. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. He will also consider the actions taken by the authority to check that the information was not held and he will consider if the

authority is able to explain why the information was not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held. He is only required to make a judgement on whether the information was held "on the balance of probabilities".<sup>1</sup>

12. During the Commissioner's investigation, the council maintained that it had made all the information held available to the complainant. It provided a link to its planning portal. It said that although the complainant had used incorrect planning reference numbers in her requests (the correct ones are 14/03959/h and 14/01962/f), a simple search by address would also have yielded the same results. It said that this information contains the requested decision date and also the date of the revised plans. The council also said that any objections would have been considered in the planning officer's report on 24 October 2014 also available on the website.
13. On the subject of the query about precedent setting in the requests, the council said that it had subsequently written to the complainant on 27 November 2014 and explained that granting planning permission does not set a precedent for other proposals being allowed as each planning application is considered on its own merits. The council reiterated to the Commissioner that each case is decided on its merits in relation to the appropriate policies referred to in the planning officer's report, and the reasoning for the granting or refusal of individual planning applications is provided within that report.
14. In relation to the additional queries about objections to the size of the garage and whether it considered any arising highway and safety issues for motorists and pedestrians, the council confirmed that these issues were considered in the planning officer's report. The council highlighted the following extracts of the report as being particularly relevant to these aspects of the request:

*"Whilst this proposed development is large in scale, amendments have been made to reduce this development to a size which is more appropriate and in keeping within the original dwelling house. This development is now assessed as an appropriate size which does not dominate the existing dwelling. Furthermore, it is evident from visiting the site that the neighbouring dwelling has also been extended and thus this development does not unbalance this property"*

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<sup>1</sup> This approach is supported by the Information Tribunal's findings in *Linda Bromley and Others / Environment Agency* (31 August 2007) EA/2006/0072

*"It has also been stated that the development will result in a higher frequency of traffic use, with more on street parking within the local area however adequate parking space has been retained and thus this development will not result in any harm to the detriment of the highway. Furthermore, it has been stated that the size of this development may increase the number of people residing within and visiting the property, however this does not act as a material consideration and thus this application is assessed on its individual merits".*

15. The council explained to the Commissioner that it uses a case management system called Uniform to record and hold all information concerning planning applications. The council confirmed that when the request was received, a planning officer checked the recorded information held on the Uniform system. The planning officer also checked that that no hard copy records existed beyond those on the system. The council confirmed that the information on its publicly available "planning portal" reflects the information held on Uniform and no other recorded information is held.
16. The council explained that it had the impression that the complainant was seeking opinions rather than information that was likely to be held in a recorded form. It said that any information that was relevant to the application would have been recorded. The council confirmed that no recorded information falling within the scope of these requests had been deleted, destroyed or mislaid.
17. In relation to the request about whether the decision to grant the particular planning application in question would form a precedent, the council has explained that each planning application is considered on its own merits. The reasons for granting any particular planning application are set out in the planning officers' reports. Any planning policies relevant to the decisions made are also set out in the reports and relevant parts are quoted. A great deal of planning guidance is also publicly available on the Planning Portal. The Commissioner notes that there are some policies quoted in the report relating to planning application 14/03959/H that deal with extensions being in keeping with the local area. The planning officer's report highlights that the extensions to neighbouring properties had a bearing on the decision to grant this particular application, but there were other relevant considerations too. It is clear from this and the council's explanation of the general planning process that while other neighbouring developments may have an impact on future development, they do not form a precedent. Rather a range of considerations from various planning policies feed into the outcome of any given planning application considered on its own merits.

18. The Commissioner does not accept that the general principle that planning applications are considered on their own merits could not be arrived at with reference to recorded information held by the council. However, the fact is that general principle has been communicated to the complainant, albeit at a late stage. Without any further arguments from the complainant about what else she would expect to receive, the Commissioner's view is that the information sought has been made available.
19. In relation to the request about whether the planning application was granted 'unconventionally' or whether it was deemed acceptable, the planning officer's report makes it clear that the application was deemed to be acceptable and it explains fully the reasons for that decision. There is some reference within the planning report provided to the fact that one aspect of the particular development in question would be contrary to planning policy in ordinary circumstances but it is explained that the number of neighbouring dwellings which have been extended in a similar manner means that the extension is deemed acceptable because it would not be out of character with its surrounding.
20. The council has also been able to highlight specific information falling within the scope of the requests which is available on its planning portal relating to the dates requested. The requests for information about how the council dealt with issues about the size of the extension and highway and safety issues is satisfied by the provision of the planning officer's report.
21. The council has been able to provide a reasonable account of the searches it has conducted to check that no other recorded information was held, and an explanation for the position taken. In the Commissioner's view, the complainant has not made out a case to suggest that any other recorded information was held beyond that already publicly available. It was not clear to the Commissioner why the complainant continues to believe that recorded information is being withheld from her or what further information she would expect to receive in the circumstances. In the absence of any clear arguments from the complainant on the matter or any other available evidence, the Commissioner finds that on the balance of probabilities, the council has made all the environmental information held available in accordance with its obligation under regulation 5(1).

## **Regulation 11**

22. The complainant complained to the Commissioner that the council took too long to complete its internal review. Regulation 11(4) of the EIR provides that public authorities should respond to representations made about the handling of requests for information within 40 working days.

In this case, the complainant expressed dissatisfaction with the response on 13 November 2014. The council completed its internal review the following day. The internal review was therefore provided within the 40 working day period allowed and the Commissioner does not therefore find any breach of the EIR in this respect.

## **Other matters**

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23. The complainant raised other concerns with the Commissioner regarding the council's internal review. Those concerns do not relate to formal breaches of the EIR. However, the Code of Practice on the discharge of the obligations of public authorities under the Environmental Information Regulations 2004 (SI 2004 No. 3391) ("the Code") issued under regulation 16 of the EIR includes a section to assist public authorities dealing with complaints under the EIR. In part XII of the Code, it states that public authorities should provide details of their complaints procedure when they receive a complaint under the EIR and should inform the complainant of the authority's target date for determining the complaint.
24. In this case, the council did initially provide details of its non-statutory complaints procedure via a website link as part of the internal review it conducted. However, the council followed this up with a further item of correspondence on 18 December 2014. The council appears to have treated the enquiry about the internal review procedure as a further formal request for information. The Commissioner can appreciate why the complainant found this to be unnecessarily bureaucratic. In future, the Commissioner would recommend that the council responds to enquiries for details of its complaints handling procedures as part of its normal course of business and that it highlights the relevant statutory regulations relating to complaints made under the EIR. In general, providing a named point of contact wherever possible is also helpful when dealing with internal review requests.



## Right of appeal

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25. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

26. 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.
27. 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**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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