

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

Date: 31 August 2017

Public Authority: Kirklees Metropolitan Council
Address: Civic Centre 3
Market Street
Huddersfield
JD1 1WG

Decision (including any steps ordered)

1. The complainant requested information relating to plans to build a wheel park. Kirklees Metropolitan Council ("the council") provided information but withheld some using the exception under regulation 13(1) of the Environmental Information Regulations 2004 ("the EIR"). The complainant asked the Commissioner to consider whether the exception had been correctly applied initially. The complainant subsequently accepted the redactions but complained that further information was held. The Commissioner's decision is that no further information was held. She does not require the council to take any steps.

Request and response

2. On 22 November 2016 the complainant requested information from the council in the following terms:

"As a former resident of Highburton and having played on the Recreation Ground as a child, I have been interested to follow the plans to build a wheel park on the playing fields. I would like to find out about the Kirklees Council decision to build a wheel park on that land. From details on the council website and in the Examiner, I believe there have been two applications, the latest one being submitted by [name] of the Council's Streetscene Department.

I would like to know how the decision making process developed for both applications and, I believe, I am entitled to see document and correspondence or communications held on this under the freedom of information. Perhaps you would be kind enough to look into this and provide me with copies of:

Notes or reports made, received or sent by the Streetscene Department to persons/bodies within or outside Kirklees Council in connection with both wheel park sites.

Notes or Minutes of meetings involving the Streetscene Department where the wheel park was discussed.

Letters received or sent by the Streetscene Department in relation to the wheel park.

Emails received (including CC or BCC) or sent by [name] in relation to the wheel park to person(s)/bodies within or outside Kirklees Council".

3. The council responded on 21 December 2016. It disclosed information but said that some information was being withheld using the exception under regulation 13(1) of the EIR. It said that disclosure of this information would breach the Data Protection Principles in the Data Protection Act 1998 ("the DPA") because the disclosure would be unfair.
4. The complainant requested an internal review on 22 December 2016.
5. The council completed its internal review on 12 January 2017. It said that it wished to maintain its refusal.

Scope of the case

6. The complainant contacted the Commissioner on 6 February 2017 to complain about the way her request for information had been handled. She asked the Commissioner to decide whether the council had correctly refused to provide some information using regulation 13(1) of the EIR.
7. Subsequently, the complainant said that she was happy to accept the redactions under regulation 13(1) however she wished the Commissioner to consider whether any further information was held.
8. Some of the information falling within the scope of the request was and is publicly available on line. Where that is the case, the Commissioner has excluded that information from the scope of her investigation.

Reasons for decision

Regulation 5(1) – Duty to make environmental information available

9. 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 available within 20 working days unless a valid exception applies.
10. 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. She will also consider the actions taken by the authority to check that the information was not held and she 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. She is only required to make a judgement on whether the information was held "on the balance of probabilities".¹
11. The Commissioner asked the complainant if she could explain why she believed that further information may be held. The complainant said she considered that the planning matter concerned had been contentious and had attracted significant media attention. She said that the council had mostly provided emails and she had expected to be provided with more information in the form of notes, minutes and letters, although she did not provide any specific details. She alleged that the council may be deliberately concealing information to avoid embarrassment.
12. The council told the Commissioner that it was confident that it had identified all the information falling within the scope of the request and wished to maintain this position.
13. The council said that the request was clearly and specifically focused on information received or sent or involving the council's Streetscene department. It also clearly asked about the decision making process regarding two planning applications. Accordingly, the council said that it had searched appropriately for information held within the relevant department, Streetscene. It said that officers had searched Streetscene's stores of information, which are mainly electronic, in

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

- order to locate and retrieve the information requested. It said that the council was satisfied that the searches were thorough and complete and that there was no reason to conduct a further search. It said that no information had been deleted, destroyed or mislaid.
14. The council explained to the Commissioner that the response contained mainly emails because that is how the information was held because the majority of the correspondence was via email. The remainder of the information held falling within the scope of the request (letters, notes, reports, minutes etc.) was already available in the public domain.
 15. The council highlighted that its response to the complainant clearly identified that some information was already publicly available. It referred to information relating to the planning files available on the council's website and provided a link. It also said that this information could be accessed via the terminal at the Customer Service Centre in the Civic Centre. It said that reports to the formal meetings of the council are similarly in the public domain and it provided a link. The council told the Commissioner that planning applications are discussed at formal meetings of the Planning Committees and District Committees and so it had provided a link to the relevant area of the council's website. It said that the relevant committees are Kirklees Rural District Committee and Planning Committee (Heavy Woollen Area).
 16. On the subject of minutes in particular, the council also highlighted that it was aware that the wheel park topic had been discussed at public meetings, such as those at Kirkburton Parish Council. These were attended by Kirklees Kirkburton ward councillors acting purely in their capacity as ward councillors rather than in any council role and minutes were not taken by council officers. No minutes taken are held on behalf of the council in line with normal practice. The council said that it was aware that these meetings were attended by a journalist who reported on the discussions in the local press. For clarity, the council advised that it held no information about this.
 17. The Commissioner accepts that on the balance of probabilities, no further information was held by the council. The Commissioner understands that the complainant appears to be distrustful of the council but there is no evidence to suggest that the council has deliberately sought to conceal information. The evidence available suggests that the council has provided the information held. It has been able to provide a reasonable explanation to deal with the complainant's concern about the form of the information, pointing out that information beyond emails was available in the public domain. In the absence of any argument from the complainant indicating that

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there are valid and specific reasons for believing that further information was held, there is no further action to take in this case.

Right of appeal

18. 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

19. 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.
20. 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

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