

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 24 April 2019

Public Authority: Surrey County Council

Address: County Hall
Penrhyn Road
Kingston on Thames
Surrey
KT1 2DN

Decision (including any steps ordered)

1. The complainant has requested the business model and financial model relating to a decision by Surrey County Council to impose car park charges. Surrey County Council disclosed some information but explained that it did not hold certain financial information and cited regulation 12(4)(a) of the EIR.
2. The Commissioner's decision is that Surrey County Council is correct to state that it does not hold the financial information in question and has therefore cited regulation 12(4)(a) appropriately. However, the Commissioner considers that Surrey County Council has breached regulation 5(2) (Duty to make available environmental information on request) of the EIR.
3. The Commissioner does not require Surrey County Council to take any steps as a result of this decision.

Request and response

4. On 6 August 2018, the complainant wrote to Surrey County Council (the council) and requested information in the following terms:

"I am requesting a copy of the Business Model for the introduction of parking charges on Chobham Common and other commons in Surrey. This has been requested in the past but was refused. The reason given at a public meeting by our local Surrey County Councillor was that it was too complicated to release, the reason given by your office was that it still being updated. Neither excuse is now acceptable as the

meeting in which it was used to justify the charges was held in January and the charges are now in force. Please forward a copy of the financial model as used for the Cabinet meeting on January 30th 2018 to impose parking Charges on Chobham Common and other commons in Surrey. I do not need a copy of the updated model which I can only assume was modified to justify the decision after the fact. I want a copy of the model as used to justify the decision to impose these charges. As this is a request for financial information, it is a request under the Freedom of Information Act and not the Environmental Information Regulations.”

5. The council responded on 4 September 2018. It explained that it was dealing with the request under the EIR and that the request was for documentation that does not exist as there was no Business Model. However, it confirmed that it did hold a Business Case and Financial Model and provided the complainant with a link to the Business Case.
6. With regard to the financial model, the council explained that it did not hold this information as the financial model in question was a working document that was constantly updated. It also explained that summary financial information was extracted from the model and provided with the committee report and more financial information was also extracted and put on the website as part of the business plan. In addition, the council also explained that, as the financial model had subsequently been updated with more data since the business case was written, it did not hold a copy of it as it was at the time of the committee meeting in question. It confirmed it was applying regulation 12(4)(a) to this part of the request.
7. Following an internal review the council wrote to the complainant on 10 October 2018. It upheld its original decision and confirmed that:

“No information was supplied as no information was held other than the information that had been included in the published Committee Report. The Service has confirmed that the figures were in an Excel spreadsheet which was regarded as a working document which has been continually overwritten since the date of the committee meeting. No copy of the document as it existed as at that date was saved as it was felt that the figures used had been recorded in the Committee Report.”

Scope of the case

8. The complainant contacted the Commissioner on 10 October 2018 to complain about the way his request for information had been handled. He explained that for the council to fail to retain the justification for an expenditure of this magnitude of tax payers’ money was not acceptable.

9. The complainant also explained that if the model was continuously being updated, he would expect that revisions of the model would be archived, especially critical revisions such as the one used at a cabinet meeting to justify a significant expenditure.
10. In addition, he explained that he found it impossible to believe that the information used at the council's cabinet meetings was not recorded and archived. He pointed out that if the council has system back up procedures then the model used in the preparation of the Business Case would be available. He also explained that he did not believe that the council did not have system backup procedures.
11. Furthermore, the complainant alleged that the only reason the model was not retained or not being provided for public scrutiny, was to avoid the embarrassment of implementing charges. He also explained that ignoring the 75% of respondents to their consultation and those that advised that the charges would not raise the planned funds was the council's decision; if it was incorrect the council should not permitted to hide the basis on which the decision was made.
12. The complainant asked the Commissioner to ascertain the true reasons as to why the financial model was not being released. He argued that failure to retain such information was at best incompetence, failure to release it, if it exists, was a breach of the Freedom of Information Act 2000 (FOIA).
13. In addition, the complainant also pointed out that the council was using the EIR. He explained that he presumed that this because the council had more latitude in refusing the request under EIR then it would do under the FOIA. The complainant also explained that he failed to see how a financial justification model about the operation of a car parking scheme was environmental information. He argued that it made no difference if the car parks were in a commons area or in the middle of a city as the model would contain only visitor numbers, costs, revenues and the assumptions behind those figures.
14. During the Commissioner's investigation, the council disclosed the spreadsheet used in the financial model, which did not include any financial information as it explained that it did not hold it.
15. The Commissioner will consider whether the council was correct to deal with request under the EIR. She will also consider whether the council was correct to state that it does not hold the outstanding financial information, in relation to the financial model. She will also consider how the council handled the request generally under the EIR.

Is the requested information environmental information?

16. The Commissioner asked the council why it considered that the requested information was environmental information for the purposes of the EIR.
17. The council explained that the proposals for which the financial model was used relate to the introduction of payment for parking, which requires the installation of parking meters, signs and other ancillary accommodation works on the land. It explained that the necessary installation and the works therefore do affect the state of the land and environment as set out in regulation 2(1)(a) of the definition in the EIRs. It also explained that the proposals come within the definition of measures in regulation 2(1)(c) and the cost-benefit and other economic analyses and assumptions used within the framework of the measures in regulation 2(1)(e).

Regulation 2 - Environmental information

18. Regulations 2(1)(a), (c) and (e) of the EIR provide the following definitions of environmental information:

"...any information in written, visual, aural, electronic or any other material form on-

(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(c) measures (including administrative measures), 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 those elements;

(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c);

19. The Commissioner has considered the council's explanation. Information about the state of the elements of the environment, such as land, is environmental information for the purposes of the EIR. The information in this case relates to works which will be carried out on the land and also relates to measures under regulation 2(1)(c) and cost-benefit analyses under regulation 2(1)(e). The Commissioner therefore considers that the request is for environmental information and that the council was correct to consider it under the EIR.

Reasons for decision

20. Regulation 12(4)(a) of the EIR provides that a public authority may refuse to disclose requested information if it does not hold that information when the applicant's request is received.
21. In cases where a dispute arises over the extent of the recorded information held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments.
22. She will also consider the actions taken by the public authority to check whether the information is held and any reasons offered by it to explain why the information is not held.
23. The Commissioner is required to make a judgement on whether, on the balance of probabilities, the requested information is held or not.
24. The Commissioner asked the council what searches it had carried out. It explained that the financial model in question was in the format of an Excel spreadsheet and that at the time it was prepared, officers had extracted the data from it as it existed at the date the report was prepared. After that date, the spreadsheet was continually updated and overwritten, with more up to date figures based on new data, so that by the time of the request, the financial model on which the report was based on, no longer existed. It also confirmed that a version of it as at the date of the preparation of the report was not kept by officers as they took the view that the figures had been extracted from the spreadsheet and recorded on the report, which was available on its website.
25. The council also explained that it had asked its IT & Digital department whether a back-up of the spreadsheet at the date of the report, still existed. The department confirmed that back-ups for which the primary purpose was business continuity were not kept for more than 14 days, which had long since passed. The council also confirmed that relevant officers had checked their email accounts and folders to see if a copy of the old version was still held.
26. The Commissioner also asked the council if its searches included electronic data, to explain whether the searches included information held locally on personal computers used by key officials (including laptop computers) and on networked resources and emails. The council confirmed that all information is held on networked systems.
27. Additionally, the Commissioner asked the council if its searches had included electronic data, which search terms had been used. The council

explained that officers working on the proposals looked through folders and emails relating to the proposals. It also confirmed that the financial information would have been held within the Excel spreadsheet in question.

28. The Commissioner asked the council whether any recorded information had ever been held but was no longer held, or had been deleted or destroyed. The council confirmed that it had held the financial information in question but by the time of the request, it had been overwritten.
29. The Commissioner also asked whether there was a business purpose for which the requested information should be held. The council confirmed there was not, explaining that its public record was the committee report which included the data.
30. The Commissioner also asked whether there were any statutory requirements upon it to retain the information. The council confirmed there were not.
31. Taking everything into account, the Commissioner does not consider that there is any evidence that show that the council holds the outstanding financial information.
32. The Commissioner is therefore satisfied that, on the balance of probabilities, the council does not hold any further recorded information in relation to this request. Accordingly, she does not consider that there is a breach of section 12(4)(a).
33. Regulation 12(4)(a) is subject to the public interest test. However, the Commissioner considers that it is not necessary to consider the public interest as to do so would be illogical. The public interest cannot favour disclosure of information that is not held.

Procedural issues

34. The complainant submitted his request on 6 August 2018. The council did not disclose a copy of the financial model (minus the financial information) until the Commissioner's investigation.

Regulation 5 – Duty to make available environmental information on request

35. Regulation 5(2) of the EIR provides that a public authority must respond to a request promptly and in any event no later than 20 working days after the date of receipt.

36. The Commissioner considers that the council breached regulation 5(2) as it took longer than 20 working days to provide the requester with a copy of the financial model, minus the financial information it does not hold.

Other matters

37. The Commissioner notes the complainant's presumption that that council handled his request under the EIR because it had more latitude in refusing the request under it then it would do under the FOIA.
38. The Commissioner does not consider this is the case. She notes that regulation 12(2) of the EIR states:

"A public authority shall apply a presumption in favour of disclosure."

Right of appeal

39. 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

40. 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.
41. 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

Gerrard Tracey
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