

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 5 May 2020

Public Authority: Borough Council of Wellingborough
Address: Swanspool House
Doddington Road
Wellingborough
Northamptonshire
NN18 1BP

Decision (including any steps ordered)

1. The complainant has requested from the Borough Council of Wellingborough ("the Council") information in relation to the safety of a 3G rubber crumb football pitch.
2. The Commissioner's decision is that the Council holds no further information in relation to the request.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 15 July 2019, the complainant wrote to the Council and requested information in the following terms:

"Please answer these questions, some which I have asked previously.

1. *What are the names of the chemicals that will be sprayed on the pitch to prevent MRSA from vomit, blood, sweat and urine?*
2. *What chemicals will be sprayed on the pitch as fire retardants?*
3. *What chemicals will be sprayed on the pitch to prevent weeds growing?*

4. *What measures are you going to put in place to stop the wind blowing the invisible, airborne carbon black nanoparticles in the rubber crumb over and into Redwell Primary School and the neighbouring houses? Planting tall evergreen trees around the perimeter will help to stop some of these carbon black nanoparticles.*
 5. *Will you be timing the maintenance of the pitch (spraying of chemicals and the redistributing of the rubber crumb) to avoid further spreading of the invisible, airborne carbon black nanoparticles into the Redwell Primary School grounds while the children are in attendance?*
 6. *How will you prevent the granules from polluting the Redwell Leisure Centre and surrounding areas?*
 7. *What will you do when you won't be able to top-up the rubber crumb infill should the proposed ECHA ban go ahead in two years time?*
 8. *Have the FF, the FA, Slatter or Murfitts informed you of the proposed ECHA ban? If they haven't, please ask them what will happen with the pitch in the future.*
 9. *How will you prevent the increase in tyre dust air pollution from the 20,000 ground up tyres affecting the 630 children at Redwell Primary School, especially relevant for children who have asthma?*
 10. *How will you prevent this dust from harming the children at the preschool in Redwell Leisure Centre?*
 11. *How are you going to stop the stench of the rubber crumb, especially during the increasingly higher temperatures of summer, from affecting the children at Redwell Primary School and the nearby residents?*
 12. *Will you pay for the antibiotics needed for footballers who scrape their legs and arms on the rubber crumb with the dust directly entering their wounds, to help stop them getting MRSA?*
 13. *Are you going to post health warning signs alongside the pitch?*
 14. *Are you going to warn players that they should limit their time spent on 3G rubber crumb pitches?*
 15. *Will you test the pitch regularly for chemical levels and publish the results?*
 16. *How will the Council safely dispose of the pitch when it reaches its end of use? I have previously sent information on how rubber crumb artificial pitches causes environmental and marine pollution.*
 17. *Why won't the Council use some of its considerable reserves to pay for a safer infill? These reserves will be swallowed up by the new unitary council so wouldn't it be better to use some of it to provide a safer infill for the pitch?*
 18. *Why was [named person] recommendation for a safer infill not implemented?"*
5. The Council responded on 12 August 2019. It stated that it did not hold the requested information.

6. Following an internal review the Council wrote to the complainant on 18 September 2019. It upheld its original position, stating that it does not hold the requested information.

Scope of the case

7. The complainant contacted the Commissioner on 30 October 2019, to complain about the way their request for information had been handled.
8. The Commissioner accepted the complaint, and asked the Council to consider whether the request for information fell under the Environmental Information Regulations 2004 (EIR).
9. Specifically, the Commissioner contacted the Council and explained that she considered that the request was likely to fall under the EIR, as it relates to the maintenance of a 3G rubber crumb football pitch . She asked the Council to reconsider its position and to provide the complainant with an updated response.
10. The Council responded, advising that it had considered the request again and was now engaging section 12(4)(a) of the EIR.
11. The Commissioner, therefore, considers that the scope of the case is to determine whether the Council holds any further information, in relation to the request, under section 12(4)(a) of the EIR.

Reasons for decision

Regulation 12(4)(a) - what information is held?

12. Regulation 12(4)(a) of the EIR states that a public authority may refuse to disclose information to the extent that it does not hold that information when the applicant's request is received.
13. In cases where there is a dispute over whether information is held, the Commissioner applies the civil test of the balance of probabilities in making her determination. This test is in line with the approach taken by the Information Rights Tribunal when it has considered whether information is held in cases which it has considered in the past.
14. The Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the public authority to check whether the information is held, and any other reasons offered by the public authority to explain why the information is

not held. She will also consider any reason why it is inherently likely or unlikely that information is held.

15. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
16. In bringing their complaint, the complainant explained that after doing research, they found that there *"were serious health and environmental issues caused by the materials used in the construction of the 3G rubber crumb artificial football pitches."*
17. The complainant has explained that they sent the Council *"various official documents, hoping that it would reconsider using the toxic and dangerous materials"*.
18. The Council has explained that it does not hold the requested information and that it has exhausted its duty by seeking the information from other sources linked to the project.
19. It explained that before construction of the pitch began, it worked with specialist consultants to determine what the most suitable material to use would be. It added that all necessary tests were reviewed by the Council prior to construction and full compliance with all requirements has been confirmed.
20. When investigating a complaint of this nature, the Commissioner is limited to considering the public authority's handling of a specific request for information. In considering what information is held by a public authority, she is required to determine what was held while the authority was considering the request: that is, from the date of the request up until the outcome of the internal review.
21. During the course of her investigation, the Commissioner asked the Council to describe the searches it carried out for information falling within the scope of the request, and the search terms used. She also asked other questions, as is her usual practice, relating to how the Council established whether or not it held further information within the scope of the request.
22. The Council explained that it has completed searches electronically and reviewed the documentation it holds on the construction and maintenance of the 3G pitch. It advised that it has also asked the Football Foundation and contractors for responses to assist with answering the request.

23. It went on to explain that it has also undertaken searches on individual email accounts and networked resources but has not been able to locate any further information in relation to the request.
24. The Council also explained to the Commissioner that no information had been deleted, due to its retention policy.
25. The Council advised that the pitch has been constructed in compliance with the Football Foundation's requirements, and checked by their approved quality surveyors. It also added that it will follow any guidance received from specialist consultants and organisations throughout the life of the facility.
26. The Council has also added that since the construction of the pitch, a maintenance manual has been provided. This was provided in February 2020, after the complainant's original request.
27. The Commissioner notes that in the Council's response to the complainant when it amended its position on 12 March 2020, it provided a copy of the maintenance manual, along with an answer to one of the complainant's questions; "3. *What chemicals will be sprayed on the pitch to prevent weeds growing?*". It confirmed which chemical, and how it would be used, following all current Control of Substances Hazardous to Health Regulations.
28. The Commissioner considers that it was entirely reasonable for the complainant to expect the Council to hold information about the maintenance of the pitch and of any health or environmental issues that it may pose.

The Commissioner's decision

29. The Commissioner has carefully reviewed the submissions of both parties and their arguments put forward.
30. The Commissioner fully understands the complainant's concern regarding the health of those using the pitch and any impact on the environment that it may have.
31. The Commissioner has considered the searches performed by the Council and explanations as to why there is no information held. She has also considered carefully the complainant's concerns and their arguments. Having considered all available information, the Commissioner does not consider that there is any specific evidence demonstrating that the Council holds any further information falling within the scope of the complainant's request.

32. The Council has carried out significant searches, in the appropriate sections of its records and other systems. Additionally, it has contacted other organisations to assist with responding to the complaint.
33. The Commissioner is therefore satisfied that the Council has demonstrated that it has reasonable grounds for considering that it does not hold any further information falling within the scope of the request, and therefore, that it has complied with the requirements of Regulation 5 of the EIR in this case.
34. The Commissioner is therefore satisfied that, on the balance of probabilities, the Council does not hold the requested information for the purposes of Regulation 12(4)(a) of the EIR.
35. Technically, Regulation 12(4)(a) of the EIR is subject to the public interest test. However, the Commissioner considers this is an unnecessary exercise where she has found that a public authority did not hold the requested information at the time of the request. The Commissioner cannot consider the public interest factors for and against disclosure when she has found that there is no recorded information held for potential disclosure.

Right of appeal

36. 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@justice.gov.uk

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

37. 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.
38. 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
Head of FoI Casework and Appeals
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