

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 October 2021

Public Authority: Blackburn with Darwen Council

Address: Town Hall
Blackburn
Lancashire
BB1 7DY

Decision (including any steps ordered)

1. The complainant has requested from Blackburn with Darwen Council ("the Council") information relating to specific payments it had made to two parties.
2. The Commissioner's decision is that the information requested is environmental and therefore the Council should have dealt with the request under the Environmental Information Regulations 2004 ("the EIR") and not the FOIA.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Reconsider and respond to the complainant's request dated 2 September 2020 under the EIR. In doing so the Council should have careful regard to the Commissioner's observations in 'Other matters'.
4. The Council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 2 September 2020, the complainant wrote to the Council and requested information in the following terms:

Summary of the following payments from Growth & Development to LEA, HOUGH & CO LLP and to UCML. This information is being requested as the summary on the expenditure spreadsheet is missing.

24/03/2020 – Growth and Development – Lea, Hough & Co LLP – Fees – 981.03 - 271669

24/03/2020– Growth and Development – Lea, Hough & Co LLP – Fees – 729.88 - 271670

24/03/2020 – Growth and Development – Lea, Hough & Co LLP – Fees – 1341 - 271676

26/03/2020 – Growth and Development – Lea, Hough & Co LLP – Fees – 671 - 272555

26/03/2020 – Growth and Development – Lea, Hough & Co LLP – Fees – 2061.72 - 272924

26/03/2020 – Growth and Development – Lea, Hough & Co LLP – Fees – 4728.28 - 272924

26/03/2020 – Growth and Development – Lea, Hough & Co LLP – Fees – 1540 - 272924

26/03/2020 – Growth and Development – Lea, Hough & Co LLP – Fees – 249 - 272001

26/03/2020 – Growth and Development – Lea, Hough & Co LLP – Fees – 251 -

18/03/2020 – Growth and Development – UCML

20/03/2020 – Growth and Development – UCML

6. On the same date, the complainant added the following to the request:

Additionally the following payments please, again from BWDBCGD to LEA, HOUGH & CO:

24/03/2020 – Growth and Development – Lea, Hough & Co LLP

24/03/2020 – Growth and Development – Lea, Hough & Co LLP

24/03/2020 – Growth and Development – Lea, Hough & Co LLP

26/03/2020 – Growth and Development – Lea, Hough & Co LLP

26/03/2020 – Growth and Development – Lea, Hough & Co LLP

7. The Council responded on 8 September 2020. It stated that the information was withheld under section 43(2) of the FOIA (prejudice to commercial interests).
8. Following an internal review, the Council wrote to the complainant on 14 September 2020. It maintained its earlier response.

Scope of the case

9. The complainant contacted the Commissioner on 16 September 2020 to complain about the way his request for information had been handled, and specifically that the Council was not entitled to rely upon section 43(2) to withhold the information.
10. The Information Commissioner's Office ("the ICO") subsequently wrote to the Council to request its arguments for the applied exemption.
11. The Council subsequently provided the ICO with its arguments, and a copy of the withheld information. As part of its arguments, the Council acknowledged that the request may fall under the terms of the EIR.
12. The scope of this case and of the following analysis is whether the Council has responded under the correct legislation.

Reasons for decision

Background

13. The request seeks information about payments that the Council has made for specific environmental studies that it has commissioned in conjunction with private landowners. These environmental studies have been commissioned to inform pre-application planning discussions by involved parties.

Is the requested information 'environmental'?

14. Regulation 2(1) of the EIR defines 'environmental information' as any information in any 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;*
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);*
- (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;*
- (d) reports on the implementation of environmental legislation;*
- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and*
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c).*
15. The Commissioner considers that the phrase “*any information...on*” should be interpreted widely in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact. In the Commissioner’s opinion a broad interpretation of this phrase will usually include information concerning, about or relating to the measure, activity, factor, etc. in question. In other words, information that would inform the public about the matter under consideration and would therefore facilitate effective participation by the public in environmental decision making is likely to be environmental information.
16. In the circumstances of this case, the Council has indicated to the Commissioner that it should have handled the request under the terms of the EIR.
17. The Commissioner has reviewed the information that the Council considers falls within the parameters of the request and agrees with the Council that it can be categorised as environmental information under regulation 2.

18. As the information is environmental, it is excluded from consideration under the FOIA by virtue of section 39.
19. The Commissioner therefore requires the council to reconsider the complainant's request under the EIR.

Other matters

20. The Commissioner reminds the Council that the request was submitted through two emails on the same day. From the submissions received from the Council, it is unclear to the Commissioner whether the Council has considered both emails. If the Council has not done this, it should address this when complying with this decision notice.
21. The Commissioner also has concerns about whether the Council has determined what recorded information the request seeks, before considering whether the information is exempt. The request seeks a 'summary', but it is unclear to the Commissioner what recorded information this actually seeks. The Council has assumed that the complainant seeks both the missing summary on the public version of the expenditure spreadsheet, along with the related invoices; but it does not appear to have verified this by seeking clarification under the terms of the legislation. If the Council is not sure what information the request seeks, or if it considers the request to have multiple interpretations, it should address this when complying with this decision notice. The Commissioner reminds the Council that whilst this decision requires it to order a response under the EIR, such a response may be advice and assistance for the purposes of regulation 9(2), should the Council consider this appropriate.

Right of appeal

22. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

23. 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.
24. 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

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