

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 24 May 2022

Public Authority: Datchworth Parish Council
Address: clerk@datchworth-pc.gov.uk

Decision (including any steps ordered)

1. The complainant requested from Datchworth Parish Council ("the Council") information relating to past work undertaken on specific trees. The Council disclosed held information. The complainant believed that further information was held.
2. The Commissioner's decision is that the Council has disclosed all held information, but has breached the requirement of regulation 5(2) by disclosing information outside the time for compliance.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 23 April 2021, the complainant wrote to the Council and requested information in the following terms:

 "[In relation to past work undertaken on specific trees adjacent to the complainant's address]

 Please provide all correspondence (emails, notes, documents etc) that concludes the justification and approval of the work."
5. The Council responded on 25 May 2021. It stated that it refused to comply with the request on the basis that all held information had been previously disclosed.

6. On 25 May 2021, the complainant asked the Council to provide an internal review on the following basis:

“Unfortunately, DPC has not provided the information requested (copy of the Risk assessment report made available to another member of the public, and full explanation of the circumstances of in the 30% reduction as per DPC’s mail) when we made our original request.”
7. Following an internal review, the Council wrote to the complainant on 22 June 2021. It stated that further information had been identified (namely a ‘risk assessment’), which the Council disclosed.

Scope of the case

8. The complainant contacted the Commissioner on 9 July 2021 to complain about the way his request for information had been handled, and specifically that the Council held further information beyond that disclosed.
9. During the course of investigation, the Council disclosed further information that it considered relevant to the request (namely internal emails relating to the Council’s handling of a previous request by the complainant on 14 January 2020).
10. The scope of this case and of the following analysis is whether the Council is likely to hold further information.

Reasons for decision

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

11. Regulation 5(1) states that any person making a request for information is entitled to have that information communicated to them. This is subject to any exceptions that may apply.
12. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
13. In other words, in order to determine such complaints, the Commissioner must decide whether on the balance of probabilities a

public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request).

The request

14. The request seeks any information that represents the "justification and approval" of past work that was undertaken on trees near the complainant's residence.

The complainant's position

15. The complainant has informed the Commissioner that this request has been made following prior requests on the same matter, to which they consider the Council has failed to disclose all relevant held information (and specifically, the risk assessment).
16. The complainant considers that the Council's previous responses to requests, as well as wider correspondence, have been contradictory, and that the previously disclosed information has been falsified.

The Commissioner's investigation

17. The Commissioner asked the Council to specify what information had been disclosed in response to the request. The Commissioner also asked the Council to detail what searches it has undertaken for any information that would fall within the parameters of the request.
18. The Council has specified that, in response to this request, it disclosed a risk assessment dated for 2017. This was only identified at internal review, due to it being contained within a sent email to a private individual.
19. The Council also specified that other related information had been disclosed in response to prior requests by the complainant. This included:
 - A 'Tree Survey' dated 5 November 2019.
 - Correspondence between the Council and EHDC.
 - Correspondence relating to the sighting of bats.
20. The Council explained that the following searches had been undertaken in response to this request:
 - A manual review of the emails held in the Clerk and Chair's email accounts.

- A consultation with a former Councillor who held responsibility for conducting assessments for many years. The former Councillor explained that, in his tenure, trees were inspected individually, and work carried out as needed. The pruning of the trees referred to (by this request) would have been done following consultation with the tree surgeon. The former Councillor advised that he was not aware of any recorded information being kept about this.
21. The Council has further explained that, it is possible that relevant information may have been previously held but destroyed (following the departure of the former Clerk), or else was never created in the first place, due to matters being discussed verbally with involved parties (such as the local arboriculturist).

The Commissioner's conclusion

22. The Commissioner considers that the Council has provided a clear and cogent account of the searches it has carried out in response to this request. These steps have resulted in held information being disclosed.
23. There is no evidence available to the Commissioner that suggests that that Council's searches in respect of this request have been deficient. The Commissioner is also mindful that, if tree related work was previously carried out without a record being made, then the Commissioner would not now expect the Council to hold such information.
24. The Commissioner emphasises, for the benefit of the complainant, that the EIR only relates to recorded information. A public authority is not required to create information, such as an explanation, in order to respond to an information request. The Commissioner's role is only to consider whether the Council has complied with the EIR.
25. Having considered the above, the Commissioner has concluded that, on the balance of probabilities, all held information has now been disclosed.

Regulation 5(2) – Time for compliance

26. Regulation 5(2) states that information should be made available no later than twenty working days after the date of receipt of the request.
27. In this case the Council did not identify the held information until the internal review stage and later, and subsequently disclosed held information outside of twenty working days. On this basis the Commissioner finds a breach of regulation 5(2).

Right of appeal

28. 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

29. 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.
30. 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