

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 17 November 2022

Public Authority: Redcar and Cleveland Borough Council

Address: Redcar and Cleveland House
Kirkleatham Street
Redcar
TS10 1RT

Decision (including any steps ordered)

1. The complainant has made two requests for information held by Redcar and Cleveland Borough Council (the council) about the legal status of a particular piece of land, and associated matters.
2. The Commissioner is satisfied that the council does not hold information relevant to Request 1, and therefore regulation 12(4)(a) of the EIR is engaged.
3. The Commissioner has also decided that regulation 12(4)(a) of the EIR can be applied to part of Request 2, as some of the requested information is not held. The Commissioner is also satisfied that, on the balance of probabilities, the council has provided all the information that it does hold that is relevant to Request 2.
4. As the council failed to issue a refusal notice within 20 working days in respect of Request 1, and part of Request 2, within the required statutory time period, the Commissioner has found a breach of Regulation 14(2) of the EIR.
5. The Commissioner has also found a breach of regulation 5(2) of the EIR in respect of Request 2, as the council failed to supply all the information that it held within the required statutory time period.
6. The Commissioner does not require the council to take any steps as a result of this decision notice.

Request and response

7. The complainant has raised concerns about the council's handling of two information requests that they have made. Given the close connection between the two requests, both in terms of content and the issues to which they relate, the Commissioner has decided that it is appropriate to consider them within one decision notice.
8. On 19 November 2021, the complainant submitted a request (Request 1) to the council for the following information:

"In relation to King George V Playing Fields in Guisborough, please could you provide details of the current Covenant and Deed of Dedication on the land from Fields in Trust. Also, if you could provide information in relation to whether the Covenant has been changed in the past 2 years and details of Fields in Trust approving a licence agreement between Guisborough Town Football Club and RCBC."
9. The council confirmed that the information requested was held. It went on to provide some background information and explanations regarding the council's position on the status of the land in question.
10. Following the internal review, the council upheld its original decision.
11. On 23 January 2022, the complainant then made a further request (Request 2) for information as follows:

"Following my FOI request FOI/21/0782 and the Council's response, I would now like to request the following:

 1. Copies of the conveyances relating to the acquisition by Guisborough Urban District Council of King George V Playing Field, Guisborough from Lord Guisborough's estate in 1954.
 2. A copy of the 'brief declaration' made by Guisborough Urban District Council in 1954.
 3. A copy of the statement by The Charities Commission in 2006 advising that the dedication made in 1954 was not lawful.
 4. A copy of the communication by RCBC stating that there were declining to 'rededicate the field' after they were invited to do so.
 5. Documentation relating to the land being reappropriated under S122 of the Local Government Act 1972 to the Open Spaces Act 1906.

6. Details of why Fields in Trust were consulted in relation to a licence application and subsequent planning application R/2021/0009/FF by Guisborough Town Football Club if this consultation was not necessary.
 7. Documentation relating to site visits conducted by Council Officers in relation to planning application R/2021/0009/FF.
 8. Documentation relating to reviews of traffic levels in the vicinity of King George V Playing Fields following the recommendation of this by Colin Monson in November 2021, and details of any subsequent Traffic Regulation Order relating to this area."
12. On 8 February 2022, the council provided some information to the complainant in response to Request 2; however, it advised that it required some additional time in order to consider whether it could release the information relevant to parts 4 and 5 of this request.
 13. On 6 April 2022, the council provided some information to the complainant in response to part 5 of Request 2, but advised that it was now of the view that it did not hold information relevant to part 4 of the request. The council also responded to some additional queries that had been raised by the complainant.
 14. Further correspondence was sent between the two parties about the requests, and the council provided some further explanations about the status of the land, and the lease granted to Guisborough Town Football Club.
 15. On 28 April 2022, the complainant requested an internal review in respect of both their requests. They set out details of three sets of information that they advised had still not been provided, which will be referred to as Point 1, Point 2, and Point 3, within this decision notice, and are as follows:
 - Point 1:** "A copy of the Deed of Dedication between Redcar & Cleveland Borough Council and Fields in Trust."
 - Point 2:** "A copy of Fields in Trust's approval of a licence agreement between the Council and Guisborough Town Football Club, including any conditions relating to the proposal."
 - Point 3:** "A copy of the communication by the Council stating they were declining to 're-dedicate the field' after they were invited to do so."

16. Whilst the council had previously carried out an internal review in respect of Request 1, its internal review response of 27 May 2022, confirmed that it had reconsidered its handling of both requests.
17. The council advised the complainant that it had considered whether it held any information that was relevant to all three points set out in their internal review request; however, it questioned whether the information set out in Point 2 had been asked for previously.
18. The council then advised the complainant that it did not hold any information that was relevant to Point 1, Point 2 or Point 3.

Scope of the case

19. The complainant's concern is that they have not received all the information that they asked for in Request 1 and Request 2. They have stated that they still require all the information set out in Points 1-3 of their internal review request of 28 April 2022; the complainant does not accept the council's claim that this information is not held.
20. The complainant has also asked the Commissioner to consider the timeliness of the council's responses to both Request 1 and Request 2.
21. The Commissioner is satisfied that the majority of the information set out by the complainant in Points 1 - 3 is relevant to the two requests that they have made to the council; however, he regards the request for "any conditions relating to the proposal" set out in Point 2 to be a new request for information. As such, the complainant would need to submit an internal review, if they disagree with the council's response to this request for information.
22. The Commissioner will decide whether the council does, on the balance of probabilities, hold any of the information set out within Points 1-3 of the complainant's internal review request of 28 April 2022 (with the exception of that information already identified as a new request in paragraph 20 of this decision notice).
23. The Commissioner will also consider the timeliness of the council's responses, as requested by the complainant.

Reasons for decision

24. Regulation 5(1) of the EIR requires a public authority that holds environmental information to make it available on request.
25. Regulation 12(4)(a) of the EIR allows a public authority to refuse to provide the requested information if it does not hold it at the time of the request being received.
26. The complainant has stated that the council has given contradictory responses about what information it does, and does not, hold in relation to Request 1 and Request 2. They state that they do not accept that the council does not hold the information set out in Point 1, Point 2 and Point 3.
27. The Commissioner notes that the council has already advised the complainant that it accepts that its initial response to Request 1, which had confirmed that the requested information was held, may have caused confusion. It states that its response was intended to confirm that it does hold details of 'how the land is held', rather than confirming that it held a Deed of Dedication.
28. The council has also apologised to the complainant for stating in its initial response to Request 2 that it held some information which it later found was not held; the council also advised the complainant that steps were being taken to ensure that a similar error did not occur again in the future.
29. The council has confirmed to the Commissioner that it has carried out an extensive search of both its current and archive systems, but has not identified any information relevant to Point 1, Point 2, or Point 3.
30. With regard to Point 1, the complainant has argued that the information provided by the council about the existence of the Deed of Dedication contradicts that which they state has been provided to them by third parties. However, the Commissioner has found no evidence that any third party has explicitly stated that a Deed of Dedication exists, or has provided a copy of such a document.
31. With regard to Point 2, the council has provided the complainant with detailed explanations regarding the use and permissions of the relevant land. The council has also advised the complainant that as the land is not dedicated, there is no requirement to consult Fields in Trust in relation to the site; it has said that if there was any consultation with Fields in Trust, this did not involve the council, and it does not hold any information relating to this.

32. With regard to Point 3, the council has confirmed to the complainant that whilst there is correspondence held around the issue of whether to "re-dedicate" the land, it does not hold any specific communication that confirms it was "declining to 're-dedicate the field' ".
33. Any dispute that may have arisen regarding the legal status of the relevant land is not a matter for the Commissioner. He is only required to investigate whether the information that has been requested by the complainant is, or is not, held by the council.
34. The Commissioner has taken into account all the information available, including details of the searches that have been carried out by the council, and the explanations it has given as to why certain information is not held.
35. The Commissioner has decided that, on the balance of probabilities, the council does not hold any information relevant to Request 1.
36. With regard to Request 2, the Commissioner is satisfied that, on the balance of probabilities, the council does not hold any information in addition to that which it has already provided to the complainant.
37. The Commissioner therefore finds that regulation 12(4)(a) of the EIR is engaged in relation to Request 1, and part of Request 2.

Procedural matters

38. The complainant has asked that the Commissioner consider the timeliness of the council's responses to their two requests.
39. The council has already acknowledged that it failed to respond to Request 1 within 20 working days (by one day).
40. The Commissioner has found a breach of regulation 14(3) of the EIR, as the council failed to issue a refusal notice, which it is required to do in relation to information it does not hold, within 20 working days.
41. With regard to Request 2, the complainant submitted the request on 23 January 2022. The council provided its initial response on 8 February 2022, stating that it required further time to consider part 4 and 5 of the request. However, it failed to provide a further response until 6 April 2022, where it provided some of the information requested, but advised other information was not held.
42. Even if it were found to be the case that it was reasonable to extend the time frame to respond to Request 2 to 40 working days (which is

permissible in certain circumstances where a case is particularly complex), the council's final response of 6 April 2022 still failed to meet this extended time limit.

43. As the council failed to provide all the information that it held, and also failed to issue a refusal notice with regard to that information which it did not hold, within the required statutory time period, the Commissioner has found a breach of regulation 5(2) and 14(2) of the EIR respectively, in relation to Request 2.

Right of appeal

44. 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

45. 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.
46. 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

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