

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 7 February 2022

Public Authority: North Somerset Council
Address: Town Hall
Walliscote Grove Road
Weston-super-Mare
BS23 1UJ

Decision (including any steps ordered)

1. The complainant requested information from North Somerset Council ("the Council") about the reasons for specific locations having been chosen for the planting of 7,000 trees. The Council provided some information and explanations, but stated that no further recorded information, falling within the scope of the request, was held.
2. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold any further information. However, since it failed to issue a response within 20 working days, it breached regulation 5(2) of the EIR.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 2 October 2020, the complainant wrote to the Council. He explained that he was concerned over the proposed "rewilding" of Portishead Golf Course which, in his view, amounted to "foresteing". He requested:

"Presumably there is an audit trail explaining how this particular site was chosen for 7,000 trees – I would be grateful if you could send me the documentation relating to this."
5. On 15 January 2021, the Council responded and provided some general explanations, and some links to published information.

6. The complainant requested an internal review later on the same day. In particular, he raised the following three questions:
 - 1) *"What I want to know is why these specific sites have been chosen for rewilding – this question remains unanswered.*
 - 2) *What you have sent says what sites have been chosen and then the formula for how many trees are to be planted in said sites as a result. There is no explanation as to how or why other than a brief one line against the various wards on one of the links in your letter. Taking Portishead West as an example [link provided], the comment is just "All available areas of NSC owned open space have been considered". What does this mean? By whom? Presumably they visited the site to look at the area and the impact? Where is the report on this? This is what I want to see (for all of the sites noted) – so that I can look at the decision making rather than the end result.*
 - 3) *Unless of course North Somerset is acknowledging that no such documents exist – can you please confirm if this is the case".*
7. On 10 February 2021, the Council provided the outcome of its internal review. It provided further explanations and provided extracts from a scrutiny panel report, and links.
8. However, it said the site had been chosen on the basis of its officers' extensive local knowledge and experience. It explained that no information such as records or site reports was held.
9. The Council's position was that regulation 12(4)(a) of the EIR – information not held – applied to the request, since no further relevant information remained to be considered for disclosure.
10. The Council also acknowledged that the request had not been handled within the statutory time-frame set out in the EIR and that it was therefore in breach of regulation 5(2).

Scope of the case

11. The complainant contacted the Commissioner on 5 February 2021 to complain about the way his request for information had been handled.
12. This notice considers whether the Council holds any further information falling within the scope of the request. It also records the procedural breach of the legislation.

Reasons for decision

Regulation 12(4)(a) – information not held

13. 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 an applicant's request is received.
14. 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.
15. The Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the public authority to check whether further information is held, and any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is held.

The complainant's view

16. The complainant remained sceptical that no further records existed to shed light on why the specific sites had been chosen for planting a very large number of trees.
17. In addition to expecting site reports, or similar, to be held, he noted that the Council stated that "*consultation was undertaken with the Forestry Commission externally and numerous experts and departments internally*". He therefore expected "*written correspondence or notes*" to be held, relating to those external and internal consultations.
18. He suggested to the Commissioner that the selection of the sites would be likely to have been regarded as contentious, which, in his view, increased the likelihood of more records having been kept.

The Council's position

19. The Council's position is that it holds no further information about the reasons for the relevant sites having been selected. It explained that, although the complainant may consider it likely that numerous sites, including those selected, would have been visited and reports made, this was not the case, because its officers "*already know what the land looks like within North Somerset, so instinctively knew which areas would meet the criteria for the rewilding... and put those areas forward for*

consultation". The Council added that the criteria referred to have already been disclosed to the complainant.

20. The Council explained that, on receipt of the request, searches were initially made of the relevant officers' case files and other saved files. On receipt of the request for an internal review, a further "automated search" was carried out of all emails, network files and Teams / Skype records, using the terms "Portishead" and "rewilding".
21. The Council explained that it had considered all of the information located in this automated search, for disclosure. Some information was found to fall outside the scope of the request, and some was disclosed to the complainant.
22. The Council also asked its officers whether any relevant information may be held elsewhere, such as on personal devices, but the officers confirmed that none was held.
23. The Commissioner asked the Council specifically about any consultation(s) with the Forestry Commission. The Council confirmed that, subsequent to the date of the request, a letter had been received from the Forestry Commission about an environmental impact assessment; however, since this related only to the chosen site and did not shed light on the reason for the site having been chosen, the Council considered that it fell outside the scope of the request in any event.

The Commissioner's decision

24. The Commissioner first considered the letter from the Forestry Commission, which the Council provided to him for consideration despite considering that it fell outside the scope of the request. The letter is dated 20 January 2021, which, the Commissioner notes, post-dates the date of the request (2 October 2020) and also the 20 working day period within which the Council was required to respond to the request. This information was not, therefore, within the scope of the complainant's information request.
25. The Commissioner next considered whether the Council holds any further information falling within the scope of the request, beyond that which was provided to the complainant in its responses of 15 January 2021 and 10 February 2021, as detailed previously in this notice.
26. Whilst he considers that it was entirely reasonable for the complainant to have expected the Council to hold more information relating to how the sites were selected, the Commissioner is satisfied that the Council carried out adequate and appropriately-targeted searches which would have been likely to locate relevant information if it were held.

27. On the balance of probabilities, he is satisfied that no further information falling within the scope of the request is held.

Procedural matters

28. Regulation 5(2) of the EIR states that information shall be made available as soon as possible and no later than 20 working days after the date of receipt of the request.
29. In this case, the Council initially failed to consider the request, which was made on 2 October 2020, under the EIR. It subsequently issued a response, and provided some information, on 15 January 2021.
30. The Council, as it has acknowledged to the Commissioner, was therefore in breach of regulation 5(2). Because a response has now been issued, the Commissioner does not require the Council to take any steps in respect of this.

Right of appeal

31. 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

32. 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.
33. 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

Ben Tomes
Group Manager
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Wycliffe House
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