

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 6 December 2012

Public Authority: Goring Parish Council
Address: Old Jubilee Fire Station
Red Cross Road
Goring
Reading RG8 9HG

Decision (including any steps ordered)

1. The complainant has requested information about allotment sites including what sites had been considered. Initially the Council refused to provide the information without citing a valid reason under the EIR and then said that it required the complainant to pay of fee of £125 for the provision of the information. Upon reviewing its decision the Council recognised that the fee it had asked for was not a reasonable fee as required by regulation 8(3) of the EIR and provided the requested information.
2. The Commissioner's decision is that because Goring Parish Council did not provide the requested information within 20 working days it breached regulation 5(2) of the EIR. He also finds that the Council breached regulation 11(5)(a). He does not require the Council to take any steps.

Request and response

3. On 6 January 2012 the complainant wrote to Goring Parish Council (the Council) and requested information in the following terms:
 1. *Which other sites (not in Parish Council ownership) have been considered by the Parish Council?*

- 2. What contacts have been made with the owners and users of those sites?*
 - 3. What external or specialist advice about allotment provision has the Parish Council sought and from whom?*
 - 4. What briefing documents have been given to Parish Councillors concerning allotment provision?*
 - 5. Is there a business plan for allotment provision and where can it be inspected?*
4. The Council responded on 11 January 2012. It explained that only 15 out of 35 residents who wanted an allotment had voted yes to a specific one, which meant it would be uneconomic. The Council also explained that there were discussions about another site which was being prepared for 35-40 new allotments and explained how it was being prepared. It also stated that it anticipated that Councillors would agree this arrangement at the next Full Council meeting on 13 February and that in view of this it did not feel it was necessary to answer the points as events had overtaken them.
 5. On 18 January the complainant responded explaining that he still wanted answers to his request of 6 January.
 6. On 30 January the Council responded. It explained that it needed time to gather the requested information and estimated that it would take 5 hours to gather all of the correspondence and copy it as there was only one person to do this. The Council went on to explain that it understood that public authorities could charge for this - £25 per hour; it asked the complainant for £125 and confirmed it had started to work on his request.
 7. On 8 February the complainant contacted the Council, complaining that it could not say it would not answer his points. He also complained about being asked for £125, explaining that this could not happen under FOIA.
 8. The complainant also pointed out that an internal review should be swift, fair and a thorough review of handling issues and of decisions taken. He explained it should be impartial and undertaken by someone senior to the original decision-maker where practicable or if not, by someone different to the original decision-maker who understands freedom of information.
 9. The complainant explained that if procedures had not been followed, the Council should provide an apology and explanation to him, taking appropriate steps to prevent a recurrence. He also explained that

because understanding what happened was costing him time and worry, plus the aggravated circumstances of this case, it might be properly thought that an exemplary remedy was appropriate.

10. The Council responded on 9 February. It stated that with regard to point 1 that there was only one site that it had entered into legal discussions about.
11. With regard to point 2 the Council referred the complainant to its reply to point 1.
12. With regard to point 3 the Council provided details of who had acted as Land Agents and explained that reference was also made to the 'National Society of Allotment and Leisure Gardeners', 'The Allotments Regeneration Initiative' and 'The Allotment Plot Holders Guide'.
13. The Council also explained that consideration for training in allotment management had also been investigated for the Clerk. In preparation for managing a site, reference books such as Growing in the Community had been purchased. The Council also explained that it had sought advice from other Councils operating allotments.
14. With regard to point 4 the Council explained that when the Petition for Allotments was made in February 2009, the then Parish Clerk gave the Council full details of its legal position on this matter.
15. With regard to point 5 the Council explained Costings for Allotments had been produced in March 2009 which had recently been tested when seeking quotes for the fencing at the site involved in legal discussions, which proved accurate. This had formed the basis of the Council's financial planning.
16. The Council also explained that it had not attempted to ignore the law or harass the complainant in any way and apologised for stating that it could charge a fee for providing the information.
17. In addition, the Council provided the complainant with a copy of a report it had prepared for a meeting on 13 February about the proposed allotment site. It included an explanation of how the proposed site would be deer and rabbit proofed, water provided, with some sites being suitable for bees.
18. On 10 February the Council wrote to the complainant and apologised again for the mistake made about charging. The member of staff concerned said that he had referred himself to South Oxford District Council with regard to the error so that any disciplinary action could be taken against him.

19. On 7 March the Council confirmed that it had carried out a review, disclosing some information to the complainant. It also enclosed an account of what it had learnt from handling the complainant's request.
20. On 16 March the complainant contacted the Council explaining that it needed to inform him of the outcome of its internal review. He explained that he considered that the Council's response of 7 March was more like an attempt to complete the provision of information, which was self-evidently incomplete. The complainant also explained that the Council should hold an extraordinary meeting to apologise to him for its mishandling of his request and provided a resolution agenda.

Scope of the case

21. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He specifically complained about the misunderstanding from the Council regarding the application of fees.

Reasons for decision

22. The Commissioner considers that the requested information is environmental information.
23. Regulation 2(1) of the EIR states that environmental information is:

"...any information in written, visual, aural, electronic or any other material form on –

(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites...biological diversity and its components...and the interaction among those elements;

(b) factors, such as substances, energy, noise, radiation or waste...emissions...and other releases into the environment, likely to affect the elements 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;..."

24. The Commissioner considers that the requested information falls within the definition of environmental information provided in Regulation 2. He considers that the setting aside of land for use as allotments is a measure likely to affect the elements of the environment as defined in

regulation 2(1)(a) namely "land and landscape" and that the information requested is information "on" or about that measure

25. Regulation 5(2) of the EIR states that when a public authority receives a request for information it must make the requested information available within 20 working days after the date of receipt of the request.
26. In this case, the Council did not provide the requested information within 20 working days .It firstly refused to provide the information without citing a valid reason under the EIR, and then said that the complainant would need to pay a fee of £125 for the information. .
27. The Commissioner considers that the Council is in breach of regulation 5(2) as it did not disclose the requested information to the complainant within 20 working days.
28. Whilst the Council's initial responses were clearly inadequate, the Commissioner notes the comments of the Information Tribunal in the case of [of McIntyre v the Information Commissioner and the Ministry of Defence \(EA/2007/0068\)](#), which was considered under FOIA.

"...the Act encourages or rather requires that an internal review must be requested before the Commissioner investigates a complaint under s50. Parliament clearly intended that a public authority should have the opportunity to review its refusal notice and if it got it wrong to be able to correct that decision before a complaint is made..."

The Commissioner considers the Tribunal's comments to be equally valid under the EIR.

29. In this case the Council corrected its errors and dropped its request for a fee when it reconsidered its decision. For this reason the Commissioner has not considered the Council's application of charges under regulation 8 any further. Rather he has considered whether the Council's response after it had completed its internal review was compliant with the provisions of the EIR. To do otherwise would, in the Commissioner's view, defeat the object of the EIR providing a mechanism under which public authorities are required to internally review their own decisions.
30. Regulation 11 provides that a public authority has to do certain things when carrying out an internal review. It must:
 - consider the requester's representations and supporting evidence;
 - decide if it has complied with the relevant provisions of the EIR;
 - notify the requester of the result of its internal review within 40 working days of receiving the request for an internal review;
 - where it finds that it has failed to comply with the regulations state this fact

- indicate what action it intends to take to comply with any outstanding requirements of the EIR and when it will take that action by.

31. The Commissioner finds that the Council complied with the requirements of regulation 11 in that it:

- considered the complainants representations and evidence;
- made a decision about whether it had complied with the EIR;
- notified the complainant of the outcome of its internal review within the statutory time limit of 40 working days;
- corrected its error in not initially advising the complainant of his right to complain to the Information Commissioner;
- provided the outstanding requested information in order to correct its original failure to comply with regulation 5(2).

The Commissioner finds however that the Council did not comply with the requirements of regulation 11(5)(a) in that it :

- didn't state that it had failed to provide an adequate refusal notice in accordance with the requirements of regulation 14 when it initially refused to answer the request on 11 January 2012.

Other matters

32. The Commissioner notes that the complainant had to advise the Council that it had a duty to comply with the requirements of FOIA when dealing with his request for information. He considers that public authorities need to be aware of their responsibilities under FOIA and the EIR when handling information requests, and would refer the Council to his [Guide to freedom of information](#) and [Guide to the EIR](#) in this respect. I

33. The Commissioner cannot comment on whether the Council should, as a matter of customer service, hold an extraordinary meeting to apologise to the complainant as this is outside his remit, but he would note that this is not a requirement under the EIR.

Right of appeal

34. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

35. 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.
36. 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

Lisa Adshead
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