

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

**Decision notice**

**Date:** 17 July 2012

**Public Authority:** Chelmsford Borough Council  
**Address:** Duke Street  
Chelmsford  
Essex  
CM1 1JE

**Decision (including any steps ordered)**

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1. The complainant requested information concerning tree inspections and other maintenance works for three named parks in Chelmsford. Chelmsford Borough Council (CBC) provided information about its 'Treewise' system where information of the type requested would be recorded and offered to arrange for the complainant to meet CBC on site in order to facilitate answering his request. The complainant did not accept this offer. CBC provided information at a later date to the complainant under the EIR in printed paper form. The complainant disputed that CBC answered his request in full and remained dissatisfied with the delay involved in his request and with the fact that it had been dealt with under the EIR.
2. The Commissioner's decision is that CBC correctly handled the request under the remit of the EIR. CBC provided the information it held in relation to the complainant's request; however, it did so outside the statutory time scale laid down by the EIR and therefore breached regulation 5(2). CBC also failed to clarify part of the request with the complainant, breaching regulation 9(2)(a); it failed to provide the complainant with details of the completed internal review, breaching regulation 11(4); and failed to provide the complainant with a refusal notice for part of the information, breaching regulations 14(1), 14(2) and 14(3). CBC did comply with its obligation to offer advice and assistance under regulation 9(1).

3. The Commissioner does not require CBC to take any remedial steps to ensure compliance with the legislation.

## Request and response

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4. On 30 October 2011, the complainant wrote to CBC and requested information in the following terms:

*"Could I have a copy of all details that have been entered on/in the 'Section 6' for West Park, Admiral's Park and Central Park in Chelmsford for as far back as possible please. In the 18<sup>th</sup> August 2010 reply to an FOI request from [named officer]'s email address the XLS file showed only tree events – I would like all entries for all 3 parks please.*

*If there are separate details kept anywhere by Chelmsford Borough Council of tree inspections, reportings [sic] and actions I would like all this information for as far back as possible too.*

*These would need to include all the information as to dates, times, actions and by whom be it person, persons or company/organisation.*

*Also details of any trees that have been found in need of attention and for what reason in any of the inspections.*

*Also details of any planned work to trees in any of these 3 parks for the foreseeable future and especially in the next 6 months."*

5. CBC acknowledged the request on 18 November 2011. It responded on 23 November 2011 and provided the complainant with some background regarding the specialist live computer system used to process information about tree inspections and maintenance ( 'Treewise'), and offered the complainant two invites to meet with CBC either on site or in its offices to be shown records on the system.
6. The complainant responded on the same day, 23 November 2011. He was dissatisfied with the details which CBC provided about the 'Treewise' system and refused the offer to meet with CBC to be assisted with his request.
7. On 26 November 2011 the complainant contacted CBC, concerned that his request had not been acknowledged properly with a reference number, and that information in either paper or electronic file form had not been offered to him in answer to his request.

8. On 29 November 2011 the complainant requested an internal review into the handling of his request for information.
9. CBC contacted the complainant on 13 December 2011 and informed him that it had prepared paper printouts regarding *'inspection and maintenance records for trees in Admirals, West, Central Parks and Tower Gardens'*. CBC advised that this information could be collected from its offices and that there were *'in excess of 800 records and maps'* contained within the information. CBC again advised the complainant that viewing the information in this form was not the most user-friendly way the requested information could be provided and invited the complainant to meet its officers on site or in its offices so that all the interactive functions of the 'Treewise' system could be utilised.
10. On 13 December 2011 the complainant contacted CBC dissatisfied with the amount of information provided, which was approximately one thousand pages of information. He stated that he did not require information about every tree inspected but just those needing attention. On 17 December 2011 and 9 January 2012 the complainant chased CBC for an internal review.

### **Scope of the case**

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11. The complainant contacted the Commissioner on 19 January 2011 to complain about the way his request for information had been handled. He was dissatisfied with the information provided by CBC and believed that further information was outstanding. The complainant was unhappy with the delay involved in CBC dealing with his request and the fact that it had been handled under the EIR and not the Freedom of Information Act 2000 (the FOIA).
12. The Commissioner has therefore considered the following:
  - whether the information is covered by the EIR;
  - whether the requested information has been provided to the complainant and in what form;
  - whether CBC sought clarification regarding the request;
  - whether CBC provided adequate advice and assistance to the complainant;
  - whether the request was dealt with in accordance with statutory time scales; and,

- whether CBC carried out an internal review in accordance with any statutory obligations or good practice guidelines.

## Reasons for decision

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### Is the requested information environmental?

13. 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 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 elements of the environment referred to in (b) and (c)...".*

14. The Commissioner considers that the information in this request falls under the definitions found at regulation 2(1) subsections (a), (c) and (f). The information is about (a) the state of the land and landscape; about (c) maintenance works or planned maintenance works on trees and activities that have an effect on the elements referred to in (a); and about (f) human health and safety in as much as it is affected or likely to be affected by the elements and factors referred to in (c) – namely, dangerous trees.

### **Duty to make available environmental information on request**

15. Regulation 5(1) of the EIR states that:

*“...a public authority that holds environmental information shall make it available on request.”*

16. In order to decide whether CBC has complied with regulation 5(2), the Commissioner has sought to determine what information relevant to the request was held by CBC, how it was recorded and how it could be located and provided to the complainant.
17. With regards to the first part of the request for *'all details entered in section 6 for West Park, Admiral's Park and Central Park...as far back as possible...'*, CBC did not recognise at the time of the request what was meant by the 'section 6' reference, and did not address this specific part of the request in any of its responses to the complainant. The Commissioner has therefore gone on later in this decision notice to investigate whether CBC complied with its obligations to seek clarification or offer advice and assistance under regulation 9 of the EIR.
18. As part of his investigation into whether CBC complied with regulation 5(1) – namely, whether it provided all information held within the scope of the request that it was able to - the Commissioner sought clarification from both parties as to what 'section 6' refers to and whether CBC held that information in relation to the request.
19. As a result of the Commissioner's enquiries it has come to light that the 'section 6' forms referred to in the request are no longer used to record hazards found after relevant inspections by CBC and therefore with regard to this part of the request the 'section 6' information is not held. CBC confirmed to the Commissioner that any information which may at one time have been recorded on the 'section 6' forms would now be found on the 'Treewise' electronic management system. It provided details of this 'Treewise' system in answer to other enquiries made by the Commissioner in the course of his investigation which can be found later in the notice.

20. The second part of the request concerned *'separate details kept anywhere by CBC of tree inspections, reportings and actions'*. The Commissioner has determined that this is the information that would be held on the 'Treewise' system. Information relevant to the request found on 'Treewise', namely all details for the three parks named, was made available to the complainant on 13 December 2011 in the form of numerous printed pages of information. As to the complainant's breakdown of the types of details that should be contained within that information, such as *'dates, times, actions and by whom be it person, persons or company/organisation'*, these details were provided as they are recorded in the 'Treewise' system.
21. The third part of the request sought *'details of any trees that have been found in need of attention and for what reason in any of the inspections'*. Again CBC explained to the Commissioner that this information if recorded would be held on the 'Treewise' system and confirmed that any recorded information of this nature had been included in the bundle of printed information provided to the complainant.
22. The fourth part of the request asked for *'details of any planned work to trees in any of these parks for the foreseeable future, especially in the next few months'*. CBC explained to the Commissioner that:

*"Treewise is a live system. Officers can enter information on the specialised tablet device whilst on site, and once back in the office synchronise it with the master system. If, for example, an officer examined a tree and noted that work was needed, once uploaded to the system Treewise would contain 'planned' works in the sense that the need to carry out work on that tree was now on the system. What the Council does not have is a separate log of planned works; all the information is recorded in Treewise."*
23. The Commissioner therefore understands that the only information relevant to this part of the request that CBC would hold would be the notes on the 'Treewise' system that highlight the need for work on a particular tree to be done rather than full details of the actual planned work itself. The amount of information captured on the 'Treewise' system at any one time would vary depending on the frequency and detail of inspections carried out. The only information which could be provided to the complainant with regard to his request for planned works would be that recorded on the 'Treewise' system as live notes made at the time of any inspections. The Commissioner accepts that detailed information about future planned works on trees in the named parks was not held by CBC at the time of the request.

24. The complainant raised concerns that all the details regarding the specific trees he had highlighted at the end of his request had not been provided in the information he received. The Commissioner made enquiries to CBC regarding what information relevant to the specific trees could be obtained from the 'Treewise' system. He asked if the specific information regarding the trees highlighted could not be located, had CBC not decided to print out all records regardless of whether the information was within the scope of the request, as the complainant seemed alarmed at the amount of information he had received.
25. CBC disagreed that it had provided information to the complainant indiscriminately. It stated that all the information provided was relevant to the request and all information it had identified as falling under the broad scope of the request had been disclosed. CBC did admit that specific information relating to trees, such as those named at the end of the request, could be extracted from the information held in 'Treewise' but that it had not been able to do this at the time this request was made as not enough information about the specific trees had been provided by the complainant. As the offer to meet with CBC to pinpoint the specific information had been refused by the complainant, CBC confirmed to the Commissioner that it had therefore decided to provide the complainant with *'a full set of records and plans'*.
26. The Commissioner notes the complainant's concerns that he has received a lot of information, some of which he has since identified himself as not what he was interested in, and has sympathy that the complainant has found it difficult to decipher some of the records provided due to the volume of the information. However, the Commissioner considers that CBC has provided to the complainant the information it holds relevant to the request and finds it reasonable in the circumstances that in order to provide more information specifically relating to the named trees, CBC would require further details from the complainant in order to identify that information. Therefore, the Commissioner finds that CBC has complied with regulation 5(1).
27. 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."*
28. Although CBC acknowledged the request and gave an initial response inviting the complainant to view information on site within the statutory 20 working days, the Commissioner notes that the information held was not made available until the 32nd working day on 13 December 2011.
29. The Commissioner, therefore, has found that CBC breached regulation 5(2) of the EIR by failing to respond within the statutory time scale.

## **Form and format of information**

30. Regulation 6(1) of the EIR states that:

*"Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless –*

*(a) it is reasonable for it to make the information available in another form or format; or*

*(b) the information is already publicly available and easily accessible to the applicant in another form or format."*

31. The complainant raised concerns with the Commissioner with regard to the fact that CBC had provided the information to him in printed, paper form.

32. The Commissioner notes that the request made on 30 October 2011 did not make reference to any preferred format in which the complainant wished the information to be provided. Moreover, he notes that it is clear from the evidence provided in this case that the most reasonably practicable form for CBC to provide the information in would be on site using the electronic 'Treewise' system at its offices. As this was not a form acceptable to the complainant, CBC then made the information available to him in a different format.

33. The Commissioner cannot find a breach of regulation 6(1) as the complainant did not specify a particular format in which he wished to receive the information. The Commissioner does consider that CBC made several attempts to provide the information in a form and format acceptable to the complainant.

## **Advice and assistance**

34. Regulation 9(1) of the EIR states that:

*"A public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants."*

35. Evidence provided to the Commissioner shows that on several occasions CBC provided advice and assistance to the complainant, explaining that the 'Treewise' system benefitted from its capacity for 'live, interactive functionality', and that information recorded on the system was kept up-to-date and inputted almost on a daily basis. CBC explained therefore that information extracted from the 'Treewise' system either printed out or saved as an electronic file would quickly become out of date.



36. CBC did provide information to the complainant in printed form on 13 December 2011 after invites to view information with a CBC officer were refused and it repeated its advice regarding the inaccessibility of the printed format when doing so.
37. The Commissioner does recognise that the complainant has struggled with the amount of information provided and has had difficulty deciphering whether the requested information was contained within the bundle of one thousand pages provided.
38. The Commissioner has considered whether to add a step for CBC to assist the complainant in understanding the information it holds either by refining the request or providing further explanations as to what information is held and how it can be accessed. However, it is clear in this case that the most efficient and accurate way of assisting the complainant with regard to accessing the precise information he requires is for him to meet with CBC's park officers and use the 'Treewise' system in its interactive function. This assistance has unfortunately been refused by the complainant a number of times and therefore the Commissioner does not consider that there is a helpful step he could add in this notice to resolve the complainant's issues. The Commissioner recognises that reasonable advice and assistance has already been provided to the complainant by CBC and finds that it has therefore complied with regulation 9(1) of the EIR.
39. Regulation 9(2) of the EIR states that:

*"Where a public authority decides that an applicant has formulated a request in too general a manner, it shall –*

  - (a) ask the applicant as soon as possible and in any event no later than 20 working days...to provide more particulars in relation to the request; and*
  - (b) assist the applicant in providing those particulars."*
40. As noted earlier in this notice, the complainant has raised concerns that the 'section 6' information requested was not provided to him within the disclosed bundle. During the Commissioner's investigation CBC admitted that at the time of answering the request it did not understand what was meant by the term 'section 6'.
41. The Commissioner advised CBC that if it had been the case that part of the request was not clear regarding what information was being requested, the correct course of action to take under the EIR would have been to contact the complainant and ask for clarification on the relevant matters.

42. CBC agreed with the Commissioner that it failed to comply with regulation 9(2) and that it should have sought clarification from the complainant at the time of the request as to what 'section 6' meant and what information the complainant wished to request.
43. In later correspondence to the Commissioner, CBC confirmed that it had established what the complainant meant by 'entered on/in the section 6'. CBC explained that:

*"in autumn 2010 the Council responded to a previous request for information from [the complainant]. At the time some parks' records were kept on paper and scanned versions were provided. As part of helping [the complainant] understand the information provided, the Council included the parenthetical note: '(For info the 'section 6' reference is where staff record any hazards or defects)'."*

44. CBC provided the Commissioner with a blank sample of a 'combined weekly worksheet/timesheet' form from 2009 and explained that 'section 6' could be found on page three where inspections, hazards and action taken would have been recorded. However, CBC went on to explain that these forms had ceased to be used as part of *"the specialised arboricultural work which now uses 'Treewise'"*. CBC again apologised for not having sought clarification on the request at the time it was made but confirmed to the Commissioner during his investigation that no 'section 6' information was held.

### **Representations and reconsideration**

45. Regulation 11 of the EIR governs both an applicant's right to request an internal review of a public authority's decision regarding an environmental information request and the obligations placed on a public authority to carry out that internal review. Regulations 11(3) and 11(4) state that:

*"The public authority shall on receipt of the representations and free of charge –*

*(a) consider them and any supporting evidence produced by the applicant; and*

*(b) decide if it has complied with the requirement."*

*"A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the receipt of the representations."*

46. It is clear from the correspondence on this case that the complainant remained dissatisfied with a number of responses from CBC regarding

his request for information. The complainant made a formal request for an internal review on 29 November 2011. The Commissioner has not been provided with a copy of a completed review during his investigation. Therefore, it appears that CBC failed to carry out a formal review of its handling of the information request. However, the fact that CBC provided the complainant with copies of the requested information in hard, paper form after the date of the internal review request suggests that it did undertake a review of its response to the request and provided the information in a different form to that originally offered, namely the invite to view the information on site.

47. In light of the above, the Commissioner finds that CBC complied with regulation 11(3) but did not comply with its obligations under regulation 11(4).

### **Refusal to disclose information**

48. Regulation 14 of the EIR states that:

*“(1) If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.*

*(2) The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.*

*(3) The refusal shall specify the reasons not to disclose the information requested, including –*

*(a) any exception relied on under regulations 12(4), 12(5) or 13; and*

*(b) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3).”*

49. Owing to the fact the CBC did not recognise or clarify the meaning of 'section 6' as referred to in the first part of the request at the time it was made, it failed to inform the complainant that the information he sought was not held. Unlike the Freedom of information Act, when a public authority states that information is not held and therefore cannot be provided, it is classed as a refusal to comply with the request. In this regard, the Commissioner notes that CBC should have complied with its obligations under regulation 14 at the time of the request and refused to disclose the information citing regulation 12(4)(a).

## Right of appeal

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50. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

51. 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.
52. 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** .....

**Jon Manners**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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