

## Environmental Information Regulations 2004

### Decision notice

**Date:** 3 July 2012

**Public Authority:** Kirklees Council  
**Address:** Civic Centre 3  
Market Street  
Huddersfield  
HD1 2TG

#### Decision

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1. The complainant requested a range of information relating to a Multi-User Games Area on Shaw Cross playing fields at Leeds Road in Dewsbury. The complainant contacted the Commissioner with concerns that drawings provided in response to one element of the request were not the information which had been asked for.
2. During the course of the Commissioner's investigation Kirklees Council (the "council") acknowledged that it had erroneously provided the wrong information and disclosed the requested information to the complainant.
3. The Commissioner's decision is that, in disclosing the requested information outside the time for compliance, the council breached regulation 5(2) of the EIR. In failing to conduct an internal review within the time for compliance he finds that the council also breached regulation 11(4) of the EIR.
4. As the council subsequently disclosed the information to the complainant the Commissioner does not require the public authority to take any steps.

#### Background

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5. The complainant represents an action group which is opposed to the council's decision to build a Multi-User Games Area (MUGA) on a playing field in Dewsbury.

6. The planning application for the MUGA was submitted by the council's culture and leisure services department and the application was approved in September 2010<sup>1</sup>.
7. Since that time the complainant has made a number of requests for information to the council in relation to this matter.

## Request and response

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8. On 14 May 2011, the complainant wrote to the council and requested the following information:
  1. *Contractors involved with the MUGA development i.e. name, address, telephone number? And*
    - 1.1 *client officer responsible for overseeing the development.*
  2. *Specifications relating to the MUGA development inclusive of any design and drawings used during the (so called) consultation process.*
  3. *estimated total costs for developing and managing the MUGA along with any contingency plans in place and the additional funding arrangements.*
  4. *tender process for the MUGA development which should include price and quality.*
  5. *companies involved in the tender process and the value of each tender submitted."*
9. The council responded on 10 June 2011. It provided the complainant with information specified in request parts 1-4 and, in relation to request 5, confirmed that information identifying the value of each tender submitted was being withheld under regulation 12(5)(e) – the EIR exception relating to the confidentiality of commercial or industrial information.
10. The complainant requested an internal review on 4 July 2011. On 9 August 2011, the council issued an internal review response which, whilst making reference to the request and a number of other requests

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<sup>1</sup> See the council's website here:

[http://www2.kirklees.gov.uk/business/planning/application\\_search/detail.aspx?id=2010%2f90885](http://www2.kirklees.gov.uk/business/planning/application_search/detail.aspx?id=2010%2f90885)

submitted by the complainant, did not address the complainant's representations in relation to this specific request.

## Scope of the case

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11. The complainant contacted the Commissioner to complain about the way their request for information had been handled.
12. The Commissioner has agreed with the complainant that his investigation will be confined to a consideration of the council's handling of request (4), specifically, whether the council provided the drawings which the request identifies.
13. The complainant has raised concerns about the provenance of information disclosed by the council during the course of the Commissioner's investigation. The Commissioner has explained to the complainant that the EIR facilitates access to environmental information held by public authorities and the origins of such information, except where a request explicitly asks this, are not relevant to his investigation. The Commissioner has, therefore, excluded this issue from the scope of his investigation.

## Reasons for decision

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### **Regulation 5(2) – duty to provide information within 20 working days**

14. Regulation 5(1) of the EIR states that "...a public authority that holds environmental information shall make it available on request."
15. Regulation 5(2) of the EIR states "Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request."
16. The council provided information in response to the request within the 20 working day timescale; however, it transpired during the Commissioner's investigation that the drawings provided had been created *after* the consultation process referred to in the request. The council has not rectified this error and the complainant was provided with the drawings specified in the request on 26 April 2012.
17. In explaining why the information was not provided with its initial response to the request, the council advised the Commissioner that, at the time the request was received, it conducted reasonable searches within the relevant departments for the information and concluded that the drawings it found and disclosed were those identified in the request.

18. Having revisited the matter during the Commissioner's investigation, the council confirmed that the drawings specified in the request were not held by the departments most likely to hold the information. However, after being prompted by the complainant, the council confirmed that the drawings had been provided in response to a previous request for information made by a different applicant in 2010. As a result of a change in personnel within the department responsible for request handling at the council this fact had been overlooked.
19. The Commissioner does not have any evidence to show that the council has deliberately delayed the complainant's access to the requested information; however, he has set out his concerns about the council's practice in this regard in the other matters section of this decision notice.
20. The Commissioner has concluded that, in its handling of part (4) of the complainant's request, the council failed to provide the information within the time for compliance and breached regulation 5(2). As the information has now been disclosed to the complainant the Commissioner does not require the council to take any steps.

### **Regulation 11 – Representations and reconsideration**

21. Regulation 11 provides applicants with a statutory right to require an authority to conduct a review – an "internal review", of its handling of a request for information.
22. Regulation 11(4) requires that a public authority receiving a request for internal review shall notify the applicant of its decision in this regard as soon as possible and no later than 40 working days after the date of receipt of the representations.
23. In this instance the complainant requested an internal review on 4 July 2011. The council responded on 9 August 2011; however, this response did not address the representations made by the complainant in respect of this specific request for information.
24. As the council failed to issue a valid internal review decision within the time for compliance the Commissioner has concluded that it breached regulation 11(4). The Commissioner does not require the council to take any steps.

### **Other matters**

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25. Although they do not form part of this notice the Commissioner would like to note the following areas of concern.

26. Paragraph 10.1 of the code of practice issued under section 46 (the "section 46 code") of the Freedom of Information Act 2000 (FOIA) notes that:

*"The effectiveness of records systems depends on knowledge of what records are held, what information they contain, in what form they are made accessible, what value they have to the organisation and how they relate to organisational functions. Without this knowledge an authority will find it difficult to:*

*a) Locate and retrieve information required for business purposes or to respond to an information request;"<sup>2</sup>*

27. The section 46 code recommends that "Authorities should know what records they hold and where they are, and should ensure that they remain usable for as long as they are required."
28. Although the request that is the subject of this notice falls to be considered under the EIR the Commissioner considers that the recommendations of the section 46 code are applicable to both information access regimes.
29. In this instance, the Commissioner notes that the council failed to identify the requested information, despite this being information which had been the subject of a previous request. Had it not been for the tenacity of the complainant in pursuing this matter, the Commissioner considers it is likely that the requested information would not have been identified and disclosed.
30. The Commissioner directs the council to the section 46 code and expects that, in its future practice, it will follow its recommendations.

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<sup>2</sup> <http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section-46-code-of-practice.pdf>

## Right of appeal

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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: 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)

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** .....

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**