

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 5 August 2013

Public Authority: Sheffield City Council
Address: Town Hall
Pinstone Street
Sheffield
S1 2HH

Decision (including any steps ordered)

1. The complainant requested details of what had been done with a sum of money that his employers were obliged to pay to Sheffield City Council (the Council) in connection with a planning matter. Having stated that it held no further information falling within the scope of the request, the Council subsequently located further information, which it disclosed to the complainant. The complainant asked the Commissioner to consider whether the Council has now located all relevant information.
2. The Commissioner's decision is that the Council has now located all information falling within the scope of the request and so it is not required to take any further action in relation to this request. However, the Commissioner has also found that the Council breached regulation 5(2) of the EIR in that it failed to supply the information within 20 working days of receipt of the request and has noted that it should improve its handling of future information request.

Background

3. The complainant provided the following background description in his letter to the ICO of 9 January 2013:

"On 25 January 2008 (Sheffield City Council) granted planning permission for the development of this company's properties in Sheffield. That permission was given in return for an obligation (formalised by what is known in planning terms as a section 106 agreement, which agreement was completed on 19 November 2007), which obligation required this company to pay to the SCC £26,532.80

when the development was completed '...towards the provision of new recreational facilities within the relevant catchment areas of the application site, including informal and formal recreation space, children's play space and youth/adult outdoor sports areas in proportion of the type of accommodation provided within the development...''.

Request and response

4. On 25 July 2012 the complainant wrote to the Council and requested information in the following terms:

"...full written / documentary evidence (along with copies of all relevant documents, where appropriate) of:

- 1. the end usage(s) of / the purpose(s) to which the entire sum paid by way of obligation was put (i.e. precisely and exactly what the monies were spent on with specific and itemised detail);*
- 2. and then upon what date(s) and (if applicable)*
- 3. the amount(s) of any sum(s) held over and ... the reason(s) for such hold over / intentions of your authority in respect of such sum(s) held over."*

5. The Council responded on 3 September 2012, outside 20 working days from receipt of the request. Despite the wording of the request being clear that the complainant wished to be supplied with documentation, no copies of recorded information were supplied at this stage. Instead, a written answer was provided which gave a brief description in response to the request.
6. A further exchange of correspondence between the complainant and the Council followed, during which the Council on two occasions, in letters dated 31 October 2012 and 20 November 2012, indicated that documentation would be supplied to the complainant. However, in a subsequent letter dated 26 November 2012, which for the purposes of this notice is regarded as the response setting out the conclusion of the internal review, the Council stated to the complainant that *"we have provided all the requested information that we have"*. The complainant had not been provided with the information referred to in the Council's letters of 31 October 2012 and 20 November 2012.

Scope of the case

7. The complainant contacted the Commissioner on 9 January 2013 to complain about the way his request for information had been handled. The complainant indicated at this stage that he was dissatisfied with the failure by the Council to supply to him recorded information. He referred specifically to the Council having indicated that it would be supplying documentation, only to state in its response of 26 November 2012 that its position was that all documentation had been provided.
8. Correspondence between the complainant and the Council continued at this time, with the Council supplying to the complainant a document titled "*Parks Woodlands and Countryside Draft Area Action Plan 2004/5*" with a letter dated 21 February 2013. In this letter the Council again indicated that it held no further information falling within the scope of the complainant's request. It made similar statements in letters dated 14 March 2013 and 16 April 2013.
9. Following this further correspondence with the Council, the complainant confirmed that he wished the Commissioner to investigate and reach a conclusion as to whether all information falling within the scope of his request had been identified and supplied to him.
10. The ICO contacted the Council on 29 April 2013 and asked it to explain the steps that it had taken to ensure that it had identified all information falling within the scope of the complainant's information request. Whilst in correspondence with the ICO, the Council located further relevant information and disclosed this to the complainant under cover of letters dated 24 May 2013 and 25 June 2013. It also stated that part of the written explanation given to the complainant in the letter of 3 September 2012 was inaccurate as to the sums that had been spent.
11. Whilst the Council handled the request under the Freedom of Information Act 2000 (FOIA), for the reasons set out below the view of the Commissioner is that the information requested is environmental and so the request should have been handled under the EIR. Whilst this makes no practical difference as the requirements covered in this notice apply equally under sections 1 and 10 of the FOIA and regulation 5 of the EIR, environmental information is absolutely exempt under section 39 of the FOIA and so it is appropriate to address in this notice whether the Council complied with the EIR.

Reasons for decision

Regulation 2

12. The first question for the Commissioner to address here is whether the information is environmental in accordance with the definition given in regulation 2(1) of the EIR, which defines environmental information as follows:

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

(a) the state of the environment, such as air and atmosphere, water, soil, land and landscape and natural sites including wetlands...

(b) factors, such as substances, energy, noise, radiation or waste, emissions...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...and activities affecting or likely to affect the elements and factors referred to in (a) and (b)...".

13. The view of the Commissioner is that this information is 'on' a plan that falls within the scope of regulation 2(1)(c). As the background description given above at paragraph 3 suggests, the information requested by the complainant concerns planning and construction. Information relating to the planning process will generally be considered environmental due to the impact that this process will inevitably have on several of the elements and factors referred to in regulations 2(1)(a) and (b). The information in question is, therefore, environmental under regulation 2(1)(c).

Regulation 5

14. Regulation 5 provides that a public authority should make environmental information available on request and that this should be done within 20 working days of receipt of a request. Part of the requirement of this regulation is that, upon receipt of a request, a public authority should identify all the information it holds that falls within the scope of the request. This analysis addresses this requirement, as well as the obligation to make information available within 20 working days of receipt of a request.

15. It is clear that the complainant's request was poorly handled by the Council. By its own admission, the initial response to the request was late, inaccurate information was given to the complainant and not all relevant information was initially disclosed.
16. The Commissioner would add to this that the Council repeatedly stated to the complainant that no further information was held, only for further information to subsequently be located. This caused particular confusion for the complainant when, as covered above, the Council indicated in its letters of 31 October and 20 November 2012 that further information was held, only to abruptly change tack and state, inaccurately as it turned out, in its 26 November 2012 letter that there was no further information to provide.
17. In correspondence with the ICO, the Council has suggested that these delays in locating and supplying the relevant information were due to the complainant not being specific about the information he sought. The view of the Commissioner, however, is that the scope of the request was clear; the complainant requested all information concerning what had been done with the funds paid to the Council. It was then the responsibility of the Council to identify all relevant information and it should not have been necessary for the complainant and the ICO to repeatedly contact the Council before it did so. The Commissioner does not accept that there was any ambiguity to the request or that this provides an explanation for the poor handling of it by the Council.
18. However, the question for the Commissioner here is whether the Council has now identified all the relevant information that it holds. The Council has described the steps that it has undertaken since the intervention of the ICO in order to identify all the information it holds that falls within the scope of the request. According to this description, the Council has now undertaken a thorough search of its records for relevant information, including searching the City Council's intranet, the records for the Rivelin Valley Playground Project and the electronic files of "*Section 106 agreements*". It also searched the City Council finance system and in doing so located invoices falling within the scope of the request, which were the most recent information disclosed to the complainant.
19. On the basis of the explanations provided by the Council, the Commissioner accepts that, on the balance of probabilities, it has now identified all information it holds that falls within the scope of the request. Whilst it was previously in breach of regulation 5 in stating to the complainant on more than one occasion that it held no further information relevant to his request when that was not the case, the conclusion of the Commissioner is that there is no outstanding breach of regulation 5 relating to the identification of relevant information.

20. The Council has, however, committed a twofold breach of regulation 5(2). First, it failed to respond to the request within 20 working days of receipt. Secondly, in relation to the information that it has now identified as falling within the scope of the request, the Council breached regulation 5(2) in failing to disclose that information within 20 working days of receipt of the request.
21. This notice does not require the Council to take any steps in relation to the complainant's request. However, a record has been made of the issue that have arisen in this case and the Council must ensure that it improves its handling of future information requests.

Right of appeal

22. 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

23. 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.
24. 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
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