

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

Decision notice

Date: 25 June 2019

Public Authority: Forest of Dean District Council
Address: Council Offices
High Street
Coleford
Gloucestershire
GL16 8HG

Decision (including any steps ordered)

1. The complainant requested information from the Forest of Dean District Council (the Council) in relation to a specific tree preservation order. The Council provided some information and stated that other information was not held.
2. The Commissioner's decision is that the Council provided the complainant with all of the recorded information falling within the scope of the request which it holds, and has therefore complied with its obligations under regulation 5(1) of the EIR.
3. The Commissioner does not require the Council to take any steps.

Background information

4. In July 2018 an individual residing in the same area as the complainant submitted to the Council an application for works on a tree that was part of the complainant's property. The basis for this was that this tree was causing excessive shading to neighbouring properties.

5. The application resulted in a tree preservation order, the decision making process for which was disputed by the complainant.

Request and response

6. On 15 September 2018, following a previous communication in relation to the tree preservation order, the complainant wrote to the Council to request information of the following description:

"...I also wish to exercise my right of access information. This request is in relation to all notes, letters and emails relating to the application and your questionable decision making process. I wish to make this request under the Freedom of Information Act."

7. The Council acknowledged receipt of the information request on 17 September 2018 and provided the complainant with a response on 10 October 2018. The Council's response consisted of
 - a portable document format ("PDF") file which contained copies of correspondence involving a Council's tree and countryside officer, the Council's sustainability team leader, a consultant from the Institute of Chartered Foresters, a member of the Arboriculture Association, two other individuals and the complainant;
 - copies of the site notes made by a Council's tree and countryside officer; and
 - a link to its website portal on this specific planning application where relevant documents and information were stored.
8. Remaining dissatisfied with the response received, on 10 October 2018 the complainant replied to the Council and stated that the link provided by the Council did not work, and that the information available online did not address the request for information.
9. On the same date, the Council provided him with a new valid web-link and attached some additional information.
10. On the same day the complainant requested the Council to conduct an internal review.
11. Following the Commissioner's involvement, the Council provided to the complainant the outcome of its internal review on 19 November 2018. It upheld its original position, asserting that all the information requested

by the complainant had been provided and confirmed that the Council did not hold any further information in recorded form.

Scope of the case

12. The complainant contacted the Commissioner on 25 October 2018 to complain about the way his request for information had been handled. In particular the complainant disputed whether the Council had identified all the information it held that fell within the scope of the request.
13. The Commissioner considers that as the requested information relates to tree preservations, the requested information is likely to fall within the EIR. Therefore, she considers it appropriate to consider the request under that access regime.
14. With that in mind, the Commissioner's investigation has focussed on whether the Council complied with regulation 5(1) of the EIR, when it stated that it did not at the time of the request hold any further information within the scope of the request to that which was disclosed.

Reasons for decision

Is the requested information related to environment?

15. Information is "environmental" if it meets the definition set out in regulation 2 of the EIR. Environmental information must be considered for disclosure under the terms of the EIR.
16. Under regulation 2(1)(c), information on any measure that will affect, or be likely to affect, the elements of the environment referred to in 2(1)(a) or the environmental factors referred to in 2(1)(b) will be environmental information. In the present case, the requested information relates to a decision making process regarding tree preservations. This process is clearly a measure that may affect several of the environmental elements and factors listed in regulations 2(1)(a) and (b). The Commissioner therefore considers it appropriate to consider the request as seeking environmental information under the terms of the EIR.

Regulation 5(1) - Information held/ not held

17. Regulation 5(1) of the EIR states that "*...a public authority that holds environmental information shall make it available on request.*"

18. When a public authority states that information is not held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, will decide whether, on the balance of probabilities, this is the case based on the adequacy of the public authority's searches for the information and any other reasons suggesting that the information was not held at the time of the request.

The complainant's position

19. The complainant considers that the Council did not address his information request appropriately. Consequently, the complainant maintains that the Council must be in possession of information beyond what was already provided and states that he is entitled to have access to this information.

The Council's position

20. The Council maintains that it has provided to the complainant all the information that it held, within the scope of the information request.
21. The Council explained that, in relation to tree preservation orders, it uses a records management computerised system called *idox*. In relation to the present request, the Council stated that all information surrounding this matter is uploaded within that system and the same information is available to the public through the portal. The link provided to the complainant enables access to the information in question.
22. The Council stated that *"on occasions documents are not uploaded and may be held on case officers' emails systems"*. For that reason the Council conducted a thorough search of the email system, the relevant case officers' desks and their information and communication technology equipment. In addition, the complainant's information request has been discussed at length with the relevant case officers. None of these activities resulted in the identification of further information to what was already disclosed.
23. When asked which search terms were used in searching its electronic data the Council stated that *"searches were made against the property and the case reference and were carried out on both locally and networked resources."*
24. The Council confirmed that no information relevant to the scope of the complainant's request has been deleted or destroyed.
25. The Council explained that *"any paper copies of application are destroyed one month after the application decision date. Electronic copies continue to be held on Idox system."*

26. With its response to the Commissioner's enquiries, the Council also attached a copy of its current Data Retention Procedures.

The Commissioner's conclusion

27. The Council has informed the Commissioner of the relevant searches for recorded information it has undertaken.
28. The Commissioner notes that the Council's Data Retention Procedures provide that information related to an application process within Environmental and Regulatory services must be retained for "2 years after registration (or 5 years if the application is revoked or refused)", whilst tree preservation orders are to be kept permanently.
29. Whilst the Commissioner recognises that the complainant does not consider that the Council has fulfilled the request, it has provided a clear explanation of the searches that underlay its response. No evidence is available to the Commissioner that indicates that the Council's searches and efforts to comply with the request have been insufficient, or that further recorded information is held.
30. In conclusion, the Commissioner has considered the searches performed by the Council, the amount of information provided, the Council's explanations as to why there is no further information held and the complainant's concerns. On the balance of probabilities, the Commissioner considers that the Council does not hold any further information to that already provided in relation to the complainant's information request.

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: 0300 1234504

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
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF