

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 2 September 2022

Public Authority: Bristol City Council

Address: City Hall
PO Box 3399
Bristol
BS1 9NE

Decision (including any steps ordered)

1. The complainant requested information from Bristol City Council ("the Council") relating to parking on a green space and damage to tree roots. The Council provided the complainant with information within the scope of the request. The complainant considers that the Council has not disclosed all the information it holds within the scope of their request.
2. The Commissioner's decision is that the Council has provided the complainant with all the information it holds within the scope of the request.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 15 July 2022, the complainant wrote to the Council and requested information in the following terms:

"Hello. I would like to see the evidence that parking on the green space outside the rank of houses on Passage Road Brentry Bristol is damaging the tree roots situated on the aforementioned green space. I would assume a report must have been drafted to this effect and this is what I wish to see.

This is in reference to emails and letter sent by [name redacted] Parks Operations Co-Ordinator – North.

[Name redacted] first letter, dated 1/7/2021, includes 'If vehicles continue to use this area for parking, we will take further action to take this land back for public use'. The letter does not outline the 'action' threatened to the car user residents.

[Name redacted] second letter, dated 9/7/2021, includes what action would of taken place if vehicles still parked on this unused – apart from residents parking – land on that date and further states that there ae plans to place boulders on the grass at the Lower Knole Lane end. I hope this is information for the Freedom of Information Request to be sent to me.

Furthermore I wish to know how many complaints have been made in the last 24 months in relation to the parking on the grass."

5. The Council responded on 11 August 2022 and provided the complainant with information within the scope of the request. However, the Council denied holding a report relating to parking on the green and damage to tree roots.
6. On 13 August 2021, the complainant requested an internal review.
7. Following an internal review, the Council wrote to the complainant on 8 September 2021. It maintained that it had provided all the information it holds within the scope of the request.

Scope of the case

8. The complainant contacted the Commissioner on 13 September 2021 to complain about the way their request for information had been handled.

9. The scope of this case and the following analysis is to determine if the Council is correct when it says that it has disclosed all the information it holds within the scope of the request.

Reasons for decision

Regulation 12(4)(a) – information held/not held

10. Regulation 5(1) of the EIR requires a public authority that holds environmental information to make it available on request.
11. Regulation 12(4)(a) of the EIR allows a public authority to refuse to provide the requested information if it does not hold it at the time of the request being received.
12. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
13. In other words, in order to determine such complaints, the Commissioner must decide whether on the balance of probabilities a public authority holds any or additional information which falls within the scope of the request (or was held at the time of the request).

The complainant's position

14. In their complaint to the Commissioner, the complainant stated that they believe the Council to hold further information within the scope of their request.
15. The complainant explained that in response to their request, the Council has provided them with some photographs which shows damage to tree roots caused by cars parking on the green space. The complainant does not consider the photographs to be the only evidence held by the Council relating to parking on the green space and the damage to tree roots. The complainant considers that the Council is likely to hold further evidence such as emails relating to the damage to tree roots caused by parking on the green space.

The Council's position

16. As is the practice in a case where there is some dispute over the amount of information located by a public authority and the amount of information that a complainant believes the public authority to hold, the

Commissioner asked the Council to provide him with a detailed explanation of the searches it had conducted for information within the scope of the request.

17. Specifically, the Commissioner asked the Council to explain what searches it has undertaken for any information which evidences that parking on the green space is damaging tree roots.
18. In its submissions to the Commissioner, the Council explained that it has carried out a search for information within the scope of the request. The Council considers that any information it holds within the scope of the request would be held by the tree officer who decided that parking on the green space was damaging tree roots. Therefore, when conducting its search, the Council consulted that tree officer to ask them whether they hold a report relating to parking on the green space and the damage to tree roots. The tree officer confirmed that no such report is held as a report was not written on the issue.
19. The Council explained that it also asked the tree officer who identified that parking on the green space was damaging tree roots whether they hold any information which evidences that parking on the green space is damaging tree roots. The tree officer confirmed that they hold some photographs taken during a site visit which evidence that parking on the green space is damaging tree roots. The Council has already disclosed these photographs to the complainant in response to the request.
20. The tree officer confirmed that the photographs taken during the site visit are the only pieces of recorded information they hold within the scope of the request as they made their decision that parking on the green space was damaging tree roots based on the site visit, the photographs taken during that site visit and the tree officer's expertise on the subject.
21. The Council explained that it has also conducted an electronic search of its email system for information within the scope of the request. This search did not result in any information within the scope of the request being located.

The Commissioner's position

22. The Commissioner has considered the Council's position in relation to whether the Council holds further information within the scope of the request.
23. The Commissioner is satisfied that the Council has carried out adequate searches for information within the scope of the request. Therefore, his decision is that on the balance of probabilities, the Council does not hold

any further information within the scope of the request and so the exception provided by regulation 12(4)(a) is engaged.

Regulation 12(1)(b) – the public interest test

24. Regulation 12(1)(b) of the EIR requires a public interest test to be carried out if a request is refused under any of the exceptions set out under regulation 12 of the EIR.
25. However, as no further information has been found to be held, the Commissioner can only find that the public interest in maintaining the exemption at 12(4)(a) of the EIR outweighs any public interest in disclosure, simply because there is no further information to disclose.

Other matters

26. The Commissioner is disappointed with the quality of the Council's submissions in this case. Whilst the Council has provided the Commissioner with submissions to support its position, the Council's submissions did not include the level of detail the Commissioner expects. The Commissioner had to write to the Council multiple times to obtain further information from the Council in order to make his decision in this case.
27. The Commissioner will log his concerns and they will be used when considering the overall compliance of the Council.

Right of appeal

28. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

29. 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.
30. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF