

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 27 October 2022

Public Authority: Doncaster Metropolitan Borough Council

Address: Civic Building
Waterdale
Doncaster
DN1 3BU

Decision (including any steps ordered)

1. The complainant requested from Doncaster Council, ('the council'), information relating to a proposed sale of land and a development. The council said that it did not hold some information, and applied Regulation 12(5)(e) to withhold other information. It subsequently disclosed the information withheld under Regulation 12(5)(e) to the complainant. The complainant argues that the council will hold more information.
2. The Commissioner's decision is that the council was correct to state that it does not hold any further information as regards the request of 2 August 2021.
3. However, as regards the request of 2 September 2021, the Commissioner has decided that the council did not fully respond to the request. The Commissioner therefore requires the council to take the following steps
 - to respond to the complainant's request for information as required by Regulation 5 of the EIR.

4. The council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

Request and response

5. Following the receipt of information from a previous request, on 2 August 2021, the complainant wrote to the council and requested information in the following terms:

"1. The 5th link relating to "Highways Capacity - assessment by Highways England" in your email is the same as the 4th link just above it (relating to archaeology). Please could you send the correct link for Item 5.

2. The Highways Junction assessment work at SDEB50.1-50.5 referred to below appears to contain no reference to the surveys requested in email 1, namely the operation of the following junctions: "1. A638 Bawtry Road / Rose Hill Rise; 2. A638 Bawtry Road / The Avenue; 3. A638 Bawtry Road / Gliwice Way signals ('Dome Corner'); 4. A638 Bawtry Road / U-turn facility, some 150 metres to the east of Dome Corner; and 5. A638 Bawtry Road / B1396 Cantley Lane signals." Please can you provide copies of the above surveys/ assessments/ reports and any associated emails or documents, or let us know where in the referenced documents in your previous email such assessments can be found (apologies if we've missed them).

3. Email 2 refers to what seems to be an assessment of the distribution and number of vehicles predicted to use the Racecourse Roundabout as a result of the proposed development. Please can you provide copies of this survey/ assessment/ report and any associated emails, or let us know where in the referenced documents in your previous email such assessments can be found (again apologies if we've missed them).

4. As part of the original request, [name redacted by the ICO] requested copies of any ecological or environmental surveys/ assessments/reports prepared in relation to Rose Hill and any associated emails or documents. It does not appear to us that the links below refer to such reports, etc. Please can you either provide copies of the requested information or confirm that none were prepared during the preparation of the local plan and/or that no such information exists.

5. We note that your email states that you have received pre-planning application enquiries in regard to the Rose Hill site and that the Council is obliged to consider whether disclosure of the requested information would be in the public interest. We understand that you have determined that such disclosure is not in the public interest at this time and have therefore not provided certain information requested. We would be grateful if you could reconsider this decision on the following grounds:

- Rose Hill is land which is owned by the Council. The Council is intending to sell Rose Hill to a property developer (Miller Homes) for development. The Council is therefore currently involved in a pre-planning application process with a property developer in relation to development on land which it itself owns. If the land is not suitable for development, then the Council will be unable to sell the land to the developer. The Council therefore has a financial interest in both the pre-planning process and in planning permission being granted to the developer. There is therefore a clear public interest in the documents requested and which were prepared during the pre-planning process being disclosed in order to ensure transparency.
- Miller Homes has informed local residents in writing that it will be submitting a planning application in relation to Rose Hill. A number of the criteria cited for non-disclosure are therefore not relevant in this instance.

Given the above, we would be grateful if you could provide the requested information in relation to the pre-planning application period with Miller Homes.”

6. The council responded on 27 August 2021. It argued that:

1. The correct link was provided.
2. Email 1 is not related to the evidence associated to SDEB50.1-50.5 for the local plan. This email was relating to a development enquiry around the site and further information cannot be disclosed as per response to question 5.
3. The email was relating to a development enquiry around the site and further information can not be disclosed as per response to question 5.
4. It does not hold surveys in relation to specific sites as part of the Local Plan process, this information would be forthcoming as part of a planning application.

5. It upheld its position (from the previous request) that Regulation 12(5)(e) applies and that the public interest rests in the information being withheld. It said that it would publish further information once a planning application was received.
7. The complainant requested that the council carry out a review of its decision on 2 September 2021. He argued that further information should be held by it, and asked the council to review the application of Regulation 12(5)(e) to withhold information.
8. He also made an additional request for information relating to the preparation of the Local Plan:

"According to [name of individual redacted by the ICO], an assessment of the access issues pertaining to this site (alongside all other site allocations in the Local Plan) was therefore performed by the Council as part of the site selection methodology. Given this, I would therefore be grateful if all correspondence, documents, emails or reports relating to this assessment of site 350/407 could please be provided

For the avoidance of doubt, such documents should include details of any and all correspondence, documents, emails or reports relating to the suitability and viability of access to site 350/407 given the proposed development referring to:

- i. the existing roads on the Rose Hill estate (consisting of The Avenue, Rose Hill Rise, Park Lane and Moorland Grove);
- ii. the junction between A638 Bawtry Road / Rose Hill Rise;
- iii. the junction between A638 Bawtry Road / The Avenue;
- iv. the junction between A638 Bawtry Road / Gliwice Way signals ('Dome Corner');
- v. the A638 Bawtry Road / U-turn facility, some 150 metres to the east of Dome Corner;
- vi. the A638 Bawtry Road / B1396 Cantley Lane signals; and
- vii. the impact on the A638 "racecourse roundabout" of the proposed development.

As stated by [name of individual redacted by the ICO], the results of the assessment performed then fed into the Planning Brief for the Rose Hill site. I would therefore be grateful if you could also provide copies of all correspondence, documents, emails or reports relating to site access/ transport matters and issues which were used in preparing and producing the Planning Brief (to the extent that these are in addition to, or different to, the documents, etc referred to above).

If no such assessments as referred to by [name of individual redacted by the ICO] or no correspondence, documents, emails or reports relating to the site were produced by either the Council's Highways department or other relevant Council departments in producing the Local Plan or Planning Brief, please could you confirm that this is the case."

9. The council provided the outcome of its internal review on 7 October 2021. It maintained its initial position. It said that no information is held in relation to parts 2 and 3 of the request. Regarding part 4 of the request, it said that it does not hold surveys in relation to specific sites as part of the Local Plan process but that this information would be forthcoming as part of a planning application. It also confirmed its reliance upon Regulation 12(5)(e) to withhold other information in relation to parts 2, 3 and 5 of the request.
10. As regards the additional request for information of 2 September 2022, the council directed the complainant to its website, which contained documents relating to its Local Plan examination.
11. However, it also clarified that it does not hold assessments in relation to specific sites as part of the Local Plan process. It said that this information would be forthcoming as part of a planning application.

Scope of the case

12. The complainant contacted the Commissioner on 11 October 2021 to complain about the way his requests for information had been handled.
13. During the course of the Commissioner's investigation the council withdrew its reliance upon Regulation 12(5)(e) and disclosed the information which it had previously withheld under this exception to the complainant.
14. The following decision notice analyses whether any further information is held by the council which should have been disclosed in response to the complainant's request of 2 August 2021.
15. It also considers whether the council has complied with the requirements of the EIR in terms of the complainant's request for information of 2 September 2021.

Reasons for decision

The request of 2 August 2021

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

16. Broadly, Regulation 5(1) provides that, subject to an exception applying, a public authority that holds environmental information shall make it available on request.
17. Regulation 12(4)(a) states that a public authority may refuse to disclose information to the extent that it does not hold that information when an applicant's request is received.
18. The council argues that it does not hold the information requested by the complainant. It has therefore applied Regulation 12(4)(a).
19. 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 ICO, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
20. In other words, in order to determine such complaints, the ICO 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

21. The complainant argues that the council owns the land in question, and that it should therefore hold and disclose the information which he requested.

The council's position

22. In response to the Commissioner's questions, the council reiterated that:
 1. The relevant link was correct, and the information provided.
 2. No information is held beyond an initial email.
 3. No information is held beyond an initial email.
 4. No information is held.
 5. Further information has now been disclosed to the complainant (as noted in the scope section of this decision notice).

23. The council argues that it does not hold the requested information. It said that emails referred to by the complainant relating to parts 2 and 3 of the request were provided to it by developers intending to submit planning applications, however no subsequent planning applications were received by the developers and so no information is held. It argues therefore that the requested information was never received by the council.
24. As regards point 4, the council reiterated that no information is held falling within the scope of the request. It argued that this type of information would only be provided to it as part of a planning application for the relevant site.
25. The council also outlined the searches which it had carried out to establish whether it holds any relevant information. These included searches of its electronic files using key words to identify relevant documents, and consultation with its highways staff to determine whether any further information may be held which was not initially identified. None was located. It confirmed that no information had been deleted falling within the scope of the request.

The Commissioner's conclusion

26. The Commissioner has considered the council's position, in conjunction with the request.
27. Whilst the Commissioner recognises that the complainant believes that further information should be held, the council has confirmed to the Commissioner that it has carried out appropriate searches and established that that is not the case.
28. As regards parts 2 and 3 of the request, the council has explained why it does not hold the relevant information. It also previously provided an explanation why the information is not held as regards point 4.
29. The Commissioner is satisfied that the council has described how it has carried out adequate and appropriate searches to determine whether it holds any information falling within the scope of the complainant's request for information.
30. There is no contradictory evidence available to the Commissioner that indicates the council's position is wrong.
31. On this basis the Commissioner has concluded that, on the balance of probabilities, the requested information is not held.

The request of 2 September 2021

Regulation 5(2) – Duty to make available environmental information on request

32. The request relates to the preparation of the local plan for the relevant area specified in his request.
33. The Commissioner notes that in its response to this request, dated 7 October 2021, the council said that no assessments were held as they would be received as part of planning applications. It directed the complainant to its website, and to documents associated with the Local Plan Examination.
34. However, the complainant's request included a wider scope of information than just assessments. It requested all correspondence, documents, emails or reports relating to the suitability and viability of access to the relevant site. The additional information which was requested was not addressed in the council's response to the complainant of 7 October 2021.
35. The Commissioner therefore requires the council to respond to the complainant's request of information of 2 September 2021 again, as required by Regulation 5 of the EIR.

Right of appeal

36. 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

37. 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.
38. 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

Ian Walley
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF