

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 5 January 2023

**Public Authority:** Kirklees Metropolitan Council  
**Address:** Civic Centre  
3 Market Street  
Huddersfield  
HD1 1WG

#### **Decision (including any steps ordered)**

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1. The complainant requested communications between Kirklees Metropolitan Council (the "Council") and third parties regarding the plans to develop land identified during Local Plan hearings.
2. The Council provided a response which stated a nil return and that it did not hold any information within scope of the request.
3. The Commissioner determined that the Council incorrectly handled the request under FOIA and that the request fell to be considered under the EIR as it concerned planning and the environment. Having considered the application of regulation 12(4)(a) – information not held – which has similarities to section 1(1) of FOIA, he is satisfied that, on the balance of probabilities, the Council did not hold the information requested by the complainant. However, the Council failed to issue a refusal notice relying on regulation 12(4)(a) of the EIR - information not held - within 20 working days, it therefore breached Regulation 14 of the EIR.
4. The Commissioner does not require any steps to be taken as a result of this decision notice.

## **Request and response**

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5. On 21 February 2022, the complainant wrote to the Council and requested information in the following terms:

"I am making a request under the Freedom of Information Act for all written communication between Kirklees council Lead Local Flood Authority and SSG ( Bristol) , Firstplan and agents acting on behalf of those companies, regarding the plans to develop land between A58, and Whitechapel Road, Scholes which was identified as E1831 during the Local Plan hearings. This is currently identified by planning application 2021/62/92603/E.

Documentation within the planning application confirm consultations took place during the pre application phase. Therefore, I request the period concerned is January 2020 to present time."

6. After a number of chaser emails from the complainant, the Council finally responded on the 24 June 2022 stating: "The Council service which has looked into your request has returned a nil response. They have reviewed file locations and mailboxes and found no information which fits the scope of the request."
7. On 25 August 2022, the Council responded to the complainants internal review request stating: "I have taken the opportunity to liaise with the appropriate Service of the Council and am advised that no information is held within the scope of your request" and that they upheld the original response and stated that no information in scope of the request was held.

## **Scope of the case**

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8. The complainant initially contacted the Commissioner on 8 June 2022, to complain about the way their request for information had been handled and after further correspondence with both the Council and the ICO, the complaint was accepted on 31 August 2022 after the internal review outcome.
9. The Commissioner considers the scope of his investigation is to determine if the Council has correctly refused to provide the information requested under regulation 12(4)(a) of the EIR - information not held.

## Reasons for decision

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10. The Commissioner notes that the request seeks information about planning and flood/drainage measures – which would be environmental information. Whilst it would not affect his conclusion as to whether the Council does or does not hold the information, he considers that the Council should have dealt with the request under the EIR.
11. This reasoning covers whether the Council are correct when it says that it does not hold the information the complainant requested.
12. During the Commissioner's investigation the Council has explained its approach and how it has carried out appropriate searches in order to confirm that it does not hold the requested information. It is unfortunate that the Council did not convey this approach to the complainant, which may have helped them better understand what the Council has done to comply with their request.
13. The Commissioner is satisfied that from the information provided to him, on the balance of probabilities, the Council does not hold information in the scope of the request.
14. As no information within the scope of the request is 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 information to disclose.

## Procedural matters

15. Regulation 14 of the EIR states that:

“(1) If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.

(2) The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.

(3) The refusal shall specify the reasons not to disclose the information requested, including—

(a) any exception relied on under regulations 12(4), 12(5) or 13; and

(b) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3).”

16. There is no explicit provision in the EIR which requires a public authority to confirm or deny that it holds information – although the Commissioner considers it good practice to do so.
17. The Council confirmed that the Officer conducting the searches cannot recall any correspondence with the companies named in the request and are unable to recall whether any emails were ever deleted relating to this planning application but confirm that no emails have been deleted since receipt of the request.
18. However, where a public authority does not hold the particular environmental information that has been sought, the correct course of action is to inform the requestor that it is relying on Regulation 12(4)(a) of the EIR to refuse the request as the information is not held.
19. Whilst the Council did issue a refusal notice, that refusal notice did not cite Regulation 12(4)(a) of the EIR and was not served within 20 working days from receipt of the request.
20. The Commissioner therefore finds that the Council breached Regulation 14 of the EIR in responding to the request.

## Right of appeal

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21. 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](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

22. 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.
23. 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 .....**

**Phillip Angell  
Head of Freedom of Information Casework  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**