

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

### **Decision notice**

**Date:** 28 February 2022

**Public Authority:** Isle of Wight Council  
**Address:** County Hall  
Newport  
Isle of Wight  
PO30 1UD

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

---

1. The complainant requested information from Isle of Wight Council ("the Council") about expenditure on a replacement ferry, known as "the floating bridge". The Council disclosed information in response, but the complainant argued that further recorded information was held.
2. The Commissioner's decision is that the Council should have considered the request under the EIR, rather than FOIA. However, he is satisfied that the Council has disclosed all the relevant recorded information which it held.
3. The Commissioner does not require the Council to take any steps.

#### **Request and response**

---

4. On 27 January 2021, the complainant wrote to the Council and requested information in the following terms:  
  
"Please provide in a directly comparable format to the Floating Bridge revised Business Case as reported in the press during November 2018 (at which time the total spend shown was £6.4 million up to September 2018), the overall total overspend on the replacement floating bridge FB6 from the commencement of the entire project for all consultancies and contract works for initial delivery, subsequent repairs, overhauls and maintenance. Also kindly show the additional expenditure for staff

- costs on FB6 over and above those spent on FB5 for each year showing ticket collectors as a separate line item.”
5. The Council responded on 24 February 2021. It provided two financial reports: revenue expenditure from 13 May 2017 to 31 January 2021 and a final statement of capital costs. It refused to provide information relating to the costs of remedial works stating, “any further remedial works are the subject of a legal action and therefore cannot be disclosed” on a footnote on the final statement of capital costs.
  6. Following an internal review the Council wrote to the complainant on 13 April 2021. It revised its position on information relating to the costs of remedial works, stating, “whilst the initial reply referred to some costs of remedial work being the subject of legal action and not being able to be disclosed, colleagues have clarified that the council is not yet aware of what other remedial costs may be incurred, so this information is not in fact held”. It stated that all held information within the scope of the request had been disclosed.

### **Scope of the case**

---

7. The complainant contacted the Commissioner on 20 April 2021 to complain about the way his request for information had been handled.
8. During the course of the investigation, the Commissioner advised the Council that the requested information, if held, would be likely to be “environmental” within the definition set out in the EIR.
9. This decision notice covers whether the requested information, if held, would be environmental, and covers whether the Council holds any further recorded information falling within the scope of the request.

### **Reasons for decision**

---

#### **Regulation 2(1) – definition of environmental information**

10. Regulation 2(1) of the EIR provides the following definition of environmental information:

“...any information in written, visual, aural, electronic or any other material form on-

(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its

components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, 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, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements..."

11. It is important to ensure that requests for information are handled under the correct access regime. This is particularly important when refusing to provide information, since the reasons why information can be withheld under FOIA (the exemptions) are different from the reasons why information can be withheld under the EIR (the exceptions). In addition, there are some procedural differences affecting how requests should be handled.
12. The Commissioner has produced guidance<sup>1</sup> to assist public authorities and applicants in identifying environmental information. The Commissioner's well-established view is that public authorities should adopt a broad interpretation of environmental information, in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact.
13. The Commissioner notes that the requested information comprises information on the construction and/or operation of a ferry.
14. The Commissioner is satisfied that the requested information, if held, whilst being financial in nature, would relate to both measures and activities affecting the environment, specifically coastal and marine areas.
15. The Commissioner is therefore satisfied that the information, if held, would fall within the definition at regulation 2(1)(c) and that the request fell to be considered under the EIR.

---

1

[https://ico.org.uk/media/fororganisations/documents/1146/eir\\_what\\_is\\_environmental\\_information.pdf](https://ico.org.uk/media/fororganisations/documents/1146/eir_what_is_environmental_information.pdf)

16. In such cases, the Commissioner may require a public authority to issue a fresh response to the requester under the correct regime. However, in this case, he has first considered whether the requested information is held by the Council.

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

17. Regulation 12(4)(a) of the EIR 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 complaint under consideration in this part of the notice relates to the Council's assertion that no further information within the scope of the request is held beyond that which it has already disclosed.
19. In cases where there is a dispute over whether information is held, the Commissioner applies the civil test of the balance of probabilities in making his determination. This test is in line with the approach taken by the Information Rights Tribunal when it has considered whether information is held, in cases which it has considered in the past.
20. The Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the public authority to check whether the information is held, and any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is held.

### **The complainant's view**

21. The complainant believes that the information provided to him about expenditure on the replacement floating bridge is incomplete because the total of the expenditure figures included in the information disclosed is lower than the figure reported in the press in 2018.

### **The Council's view**

22. The Council has explained that the published information the complainant based his request on was from a business case that was created in 2018 and included a number of estimated and anticipated costs and not all of these have been required. The financial information provided to him in response to his request related to actual costs.
23. The Council believes that it has carried out appropriate searches likely to retrieve any relevant information. A separate capital account was set up within the council's financial management system to record all the costs associated with the project and revenue expenditure and income are charged to a group of cost centres that are specific to the floating

bridge. Both the capital account and the cost centres were searched within the Council's financial management system. In addition, as the request specifically asked about staff costs, some data from the payroll system was also analysed. The council is required to maintain its financial accounts for a period of 7 years.

### **The Commissioner's decision**

24. The Commissioner's remit is to establish whether, on the balance of probabilities, further information falling within the scope of the request is held.
25. He is satisfied by the Council's explanations as to how it has ensured that all information within the scope of the request has been identified and as to why the total costs shown in the information disclosed are lower than those previously reported in the press. His decision is that, on the balance of probabilities, it was correct to state that it did not hold any further information and that it had disclosed all of the information held.
26. He does not require the Council to take any steps in respect of this.

## Right of appeal

---

27. 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)

28. 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.
29. 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**