

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 31 May 2022

Public Authority: Cheshire West & Chester Council
Address: 58 Nicholas Street
Chester
CH1 2NP

Decision (including any steps ordered)

1. The complainant requested information about the council waste management proposals. Cheshire West and Chester Council (the council) withheld the information on the basis that the exception in Regulation 12(4)(d) applied (Material in the course of completion, unfinished documents, and incomplete data). During the course of the Commissioner's investigation, the council indicated that it had reconsidered its position and was preparing to send the withheld information out to the complainant. It did not, however, subsequently confirm to the Commissioner that it had done so.
2. The Commissioner's decision is that as the council indicated that it was now prepared to disclose the information to the complainant, and did not provide any arguments to the Commissioner to support its position that Regulation 12(4)(d) applied, then the withheld information should be disclosed to the complainant in its entirety.
3. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
 - To disclose the withheld information to the complainant.

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. On 5 February 2021 the complainant wrote to Cheshire West and Chester Council (the council) and requested information in the following terms:
 - "Estimated cost to provide all households in the borough with a new 240 litre waste bin
 - Estimated cost to provide all households in the borough with 2 new wheeled recycling bins
 - Estimated cost to uplift & dispose of all residents existing waste & recycling bins
 - Projected increase in frequency of tip/recycling centre visits by residents by number of visits
 - Projected increase in staffing & operational costs at recycling centres due to frequency of tip/recycling centre visits by residents by number of visits
 - Projected increase in fly tipping removal costs
 - Estimated installation cost of new street bins which compact waste to be installed throughout the borough
 - Estimated incremental running cost of new street bins which compact waste to be installed throughout the borough
 - Projected operational cost savings to be gained by implementing the following proposals in the waste strategy consultation:
 - Option A
 - Option B
 - Projected additional revenue/or savings to be gained via the implementing the proposals in the waste strategy consultation:
 - Stop collecting garden waste
 - Charging to collect garden waste (at the cost levels indicated on the consultation)
 - Stop collecting garden waste in the winter, say from September to April

- Estimated additional cost of additional street sweepers to collect leaves blown onto public highways by residents who previously had garden waste removed as part of council tax payments (should this service be removed)
 - Estimated carbon emission reduction to be gained by implementing the following proposals
 - in the waste strategy consultation:
 - Option A
 - Option B
 - Estimated percentage spent on waste collection & recycling as a proportion of council tax revenue in 2020-2021 financial year
 - Estimated total cost spent on waste collection & recycling in 2020-2021 financial year
 - Estimated cost savings gained by this council for the multiple suspensions of green waste collections during the 2020-2021 financial year.”
6. The council responded on 1 March 2021. It refused to provide the requested information on the basis that Regulation 12(4)(d) applied (Material in the course of completion, unfinished documents, and incomplete data).
7. Following an internal review, the council wrote to the complainant on 28 April 2021. It maintained its position that the information was exempt from disclosure under Regulation 12(4)(d).

Scope of the case

8. The complainant contacted the Commissioner on 5 May 2021 to complain about the refusal of his information request.
9. During the course of the Commissioner's investigation, on 25 April 2022, the council said that it had reconsidered its position and decided that due to the passage of time, the withheld information could be disclosed to the complainant.

10. As of the date of this notice, however, the council has not confirmed to the Commissioner that the information has been disclosed to the complainant. The Commissioner has therefore included this disclosure as a step within this decision notice. If it has already disclosed the information to the complainant, however, then this step will already have been met.

Reasons for decision

11. In response to the Commissioner's initial investigation letter, the council replied on 25 April 2022 stating that:

"I have revisited this request this morning and can confirm that given the passage of time and the end of the consultation period, we will be reopening this request with the aim of disclosing what the requester requires. I will write to the requester this morning."

12. On the same day the Commissioner asked the council to confirm when the information was sent and to copy him in to the cover email which was sent to the complainant. The council did not respond.
13. On 9 May 2022 the Commissioner asked the council to confirm whether it had now disclosed a copy of the information to the complainant. Again, no response was received from the council.
14. The Commissioner also called the council officer concerned on 24 May 2022 and left a message asking for confirmation that the information had now been disclosed. Again, no response was received from the council.

The Commissioner analysis

15. Regulation 5(1) broadly provides that, unless one of the exceptions of the Regulations applies, a public authority that holds environmental information shall make it available on request.
16. The council's letter to the Commissioner of 25 April 2022 indicated that it was no longer seeking to rely upon the exception and was preparing to disclose the information to the complainant. The council also did not provide any arguments to support its view that Regulation 12(4)(d) applied.

17. Given the absence of such arguments, and the indication from the council that it was going to disclose the information to the complainant, the Commissioner finds that the exception provided by Regulation 12(4)(d) is not engaged and now requires the council to disclose the requested information to the complainant if it has not already done so.

Right of appeal

18. 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

19. 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.
20. 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
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