

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 16 January 2023

Public Authority: Dorset Council

Address: County Hall
Colliton Park
Dorchester
Dorset
DT1 1XJ

Decision (including any steps ordered)

1. The complainant requested from Dorset Council ("the Council") information relating to the running costs of a garden waste service. The Council withheld the requested information under section 43(2) (commercial interests) of FOIA.
2. The Commissioner's decision is that the information is environmental, and that that the Council should have considered the request under the EIR. However, the Commissioner has found that the Council is entitled to withhold the information under regulation 12(5)(e) of the EIR.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 27 May 2021, the complainant wrote to the Council and requested information in the following terms:

"Garden waste collection charges

Collection is a discretionary service for which the charge must be limited to cost recovery. In April 2020 I requested that for the 2021

charge the charge payers receive transparency of costs and calculation of the charge. In March 2021, I received a reply and told I must make a Freedom of Information request. Charge payers received no information for the 2021 charge.

Information please:

Firstly, to put costs into context, description of the components of the end to end collection process.

Detailed cost breakdown. Detailed breakdown by Direct Cost (assets and people that are employed exclusively in the collection service) and Indirect Costs (other functions that charge costs to the collection service). For Indirect Costs the basis of cost allocation and the calculation. For comparison please provide the cost breakdown for 2019/20 and 2020/21.

Minutes of meetings (with any supporting information) where the 2021 charge has been discussed and agreed."

5. The Council responded on 24 June 2021. It disclosed some information, and stated that the remainder, being a cost breakdown, was withheld under section 43(2) of FOIA.
6. Following an internal review, the Council wrote to the complainant on 24 January 2022. It maintained the application of section 43(2) of FOIA.

Reasons for decision

7. This reasoning covers first, whether the Council handled the request under the correct legislation and second, whether the information could be withheld because it was commercially sensitive.
8. The Council handled the request under the terms of FOIA, and consequently applied the exemption that FOIA provides for information that would prejudice commercial interests.
9. The requested information concerns the underlying costs of the Council's garden waste collection service. As such the Commissioner is satisfied that the information is environmental information under regulation 2(1)(c) of the EIR¹. The Commissioner has therefore concluded that the

¹ <https://www.legislation.gov.uk/uksi/2004/3391/regulation/2/made>

Council was incorrect to handle the request under FOIA and should have done so under the terms of the EIR.

10. Information can be withheld under regulation 12(5)(e) of the EIR if disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.
 11. At the time of the request, the Council explained that it considered that disclosing the costings on which the charge is based would adversely affect its own commercial interests. This was because disclosure of the information to competitors could result in those parties undercutting the Council's own service, and that such a result would risk reducing the Council's customer base and potentially impact the financial viability of the service.
 12. The Commissioner has considered four tests. First, he is satisfied that the requested information is commercial in nature. Second, he is satisfied that the information is subject to confidentiality by law because it is not trivial and is not otherwise accessible and so has the necessary quality of confidence.
 13. Third, the Commissioner has considered whether the confidentiality is provided to provide a legitimate economic interest. In this case, the Commissioner understands that the garden waste service operates in a competitive marketplace. The disclosure of the costings on which the service applies a charge, would allow competitors to identify ways by which they could seek a commercial advantage over the Council. Whilst the Commissioner has considered the complainant's argument that the Council's service is not run as a profit-creating business, it is the Commissioner's established position that commercial interest does not only relate to the ability to generate profit. Instead, commercial interest will include scenarios where a party is simply covering costs or retaining a market position. Having considered the above, the Commissioner is satisfied that the third test is met.
 14. Finally, the Commissioner is satisfied that the confidentiality would inevitably be affected if the Council disclosed this information.
 15. Since the four tests have been satisfied the Commissioner finds that regulation 12(5)(e) of the EIR is engaged as disclosing the information
-

would adversely affect the Council's commercial interests. He has gone on to consider the associated public interest test.

16. The Council noted that there is a public interest in it being open and transparent in how it delivers the garden waste service, as doing so allows public scrutiny of how the Council runs the service. The complainant likewise argues that such transparency is important so that the Council can demonstrate that the charge it applies for the service is compliant with the law. The Council also considered that disclosure of the information would benefit consumers, as it would allow marketplace competitors to provide similar services at a better cost.
17. Regarding the public interest in withholding the information, the Council has argued that disclosure of the information jeopardises the long-term viability of the service by providing competitors with a commercial advantage in being able to undercut the Council's own service. Whilst this would benefit consumers in the short term, the Council argues that if it was forced to cease providing the service at cost it would reduce options for consumers and may lead to competitors seeking to raise prices. The Council has further argued that information about the service's accounts are already published to facilitate public scrutiny.
18. The Commissioner has considered the public interest arguments. Whilst the Commissioner accepts that there is a public interest in transparency in this matter, he notes there is a competing public interest in the continuing viability of the garden waste service. The Commissioner also notes that the Council's operation of the garden waste service, and specifically the increase in charge has been subject to significant transparency through the disclosure of information, and there is no evidence available to the Commissioner that suggests the Council is failing to run the garden waste service lawfully. The Commissioner's decision is therefore that at the time of the request, the public interest favoured maintaining the regulation 12(5)(e) exception to protect the Council's commercial interests.

Right of appeal

19. 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

20. 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.
21. 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

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