

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 01 March 2023

Public Authority: Durham City Council
Address: County Hall
Durham
DH1 5UL

Decision (including any steps ordered)

1. The complainant has requested information from Durham County Council (DCC) for copies of planning files and maps for Broseley Homes, an application for the adoption of a road and files detailing the demolition and clean-up of West Moseley farm.
2. DCC provided some information and relied on Regulation 6(1)(b) of the EIR (publicly accessible) to not provide the remainder.
3. The Commissioner's decision is that DCC is entitled to rely on regulation 6(1)(b) (form and format of information) as the relevant information it holds is easily accessible to the complainant via its planning portal. However, as DCC failed to issue a refusal notice within 20 working days, and then failed to carry out an internal review within 40 working days, the Commissioner has found a breach of Regulation 5(2), 6(2), and Regulation 11(4), of the EIR respectively.
4. The Commissioner does not require further steps.

Request and response

5. On 27 January 2021, the complainant wrote to the public authority and requested information in the following terms:

"Thank you for documents sent so far would you please provide the complete file on

1 Planning application re Broseley homes.

2 Application for adoption of Road.

3 File on demolition of West musgrave farm. And

4 clean up of West Musgrave farm.

5 can I have full scale copy of the deed plan D4217076 land purchased from Musgrave estates.

If necessary I can collect from County Hall."

6. The public authority responded on 16 March 2021 stating the following:

"This request is being handled under the Environmental Information Regulations 2004. I can confirm that Durham County Council holds the information you requested.

However we are withholding that information since we consider that the following exceptions apply to it.

1. Planning application re Broseley Homes.

We consider that Regulation 6(1)(b) applies to the information requested because the information requested is already publicly available and easily accessible.

The information you requested is available on our planning portal website using the following link or searched directly under reference number 3/2006/0605:

<https://publicaccess.durham.gov.uk/onlineapplications/applicationDetails.do?activeTab=summary&keyVal=ZZZZZBRAXE268>

If you do not have access to the internet at home, you may be able to use facilities at your local library."

7. On 10 May 2022 the complainant responded to DCC, requesting a review of its decision as follows:

"Thank you for your very involved email dated 16 March 2022 which is an extremely delayed and out of time response to my two letters dated 23 November 2021.

Would you please accept this email as an application for the Council to Review the way it has dealt with my Freedom of Information Request and Data Protection Regulations Request on the grounds stated below.

I object to you dealing with my Freedom of Information Request and Data Protection Regulations Request under the Environmental Information Regulations 2004.

1.Planning application re Broseley Homes.

I am an elderly person and am not computer literate. With assistance of friends and family I can manage emails! I should therefore be grateful if you would kindly post and email me the information you refer to and requested by me without any delay and as quickly as possible, please. Thank you very much.

2. Application for adoption of Road.

3. File on demolition of West Musgrave Farm. And

4. Clean-up of West Musgrave Farm.

5. Can I have full scale copy of the deed plan D4217076 land purchased from Musgrave Estates.

My Application was for a full-scale copy of the deed plan D217076. The copy that you supplied was not a full scale copy. Will you please supply this document without any delay. Thank you

You should not be dealing with my information requests under The Freedom of Information Act and Data Protection Regulations but instead you have chosen to deal with them under The Environmental Information Regulations 2004.

Will you therefore comply with your obligations under the Freedom of Information Act and Data Protection Regulations as and post and email me these documents without any further delay. Thank you."

8. Following an internal review the public authority wrote to the complainant on 15 July 2022. It upheld its original position with regards to point 1 of the request and provided its decision on points 2 to 5 as follows:

"Our response was made under EIR. As a public body, we are required to respond under the correct access regime even if the applicant insists that a different one should be applied. In this case, the EIR is the appropriate access regime because the information relates to factors that will be influence the environment as set out in Regulation 2(1)(c) Therefore the correct access regime in this case is EIR.

I am not upholding your complaint regarding the access regime decision between FOI and EIR.

We withheld this under 6 (1) (b) which means the information is accessible by other means. Under EIR we can refuse a request where the information is reasonably accessible. We appreciate that you would prefer to have it sent as a printed document. However, our obligation under EIR is met by making it publicly available through that method.

6.'(1) Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless'

(b) the information is already publicly available and easily accessible to the applicant in another form or format.

As the information is available via our website, I am not upholding your complaint on this topic.

2. On your request for the information relating to the adoption of the road, we had previously supplied that as part of request reference 3197253. I am not upholding your complaint on this topic.

3. The information was withheld under regulation 12 (3) which holds that if the material meets the criteria in regulation 13 regarding personal data. I have reviewed this refusal and I concur that it meets the criteria of 12(3) as set out in regulation 13.

I am not upholding your complaint on this topic.

4. As with question three, the same exception applies regarding personal data as set out in regulation 12(3) and regulation 13.

I am not upholding your complaint on this topic.

5. On your request for the information relating to the full scale copy of the map, we had previously supplied that as part of request reference 3197253. I am not upholding your complaint on this

topic. Moreover, our response to question 1 would still apply as we have met our obligation to you in providing the information. That you would like this printed as a full scale map is not required for us to meet our obligations under the EIR as per section 6(1)(b).

I am not upholding your complaint on this topic.

In addition for questions 3 and 4, we also applied the exception under Regulation 12(5)(d) which refers to refusals where the Disclosure would prejudice or would be likely to prejudice the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law.

I have assessed the public interest and I conclude that it was applied correctly.

I am not upholding your complaint on this topic."

Scope of the case

9. The complainant contacted the Commissioner on 17 October 2022 to complain about the way his request for information had been handled.
10. Having reviewed its position, DCC wrote to the complainant on 2 February 2022 and disclosed a copy of the planning information requested at question 1 and also provided the information withheld under Regulation 13 of EIR for questions 3 and 4 related to the demolition and clean up at the farm.
11. The Commissioner considers that the scope of the investigation is to determine if the Council was correct to say the information is publicly available in relation to points 2 and 5 of the request.

Reasons for decision

Is the requested information environmental?

12. Regulation 2(1)(c) of the EIR defines environmental information as being information on:
 - (c) measures (including administrative measures), such as policies, legislation, plans, programs, environmental agreements, and

activities affecting or likely to affect the elements and factors as well as measures or activities designed to protect those elements;

13. As the information requested is information relating to planning applications, the Commissioner for procedural reasons, has therefore assessed this case under the EIR.

Regulation 6(1)(b) – form and format

14. Regulation 6(1) provides that where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless it is reasonable for it to make the information available in another form or format, or the information is already publicly available and easily accessible to the applicant.
15. Additionally, Regulation 6(1)(b) exists in part to protect public authorities from having to re-provide the same information continually – it also acts as an extra incentive for public authorities to make the environmental information available proactively.
16. In this case the complainant requested full scale paper copies of planning application plans and maps at request 2 and 5 stating they did not possess the necessary IT skills to access the information on DCC's website, however the complainant submitted his complaint via the ICO website and has been able to correspond with both the Commissioner and DCC, extracting documents from files and attaching documents to emails with no apparent problems. Whilst it is accepted that the complainant may have had assistance from family or friends in this regard, there is no reason to believe the complainant would be unable to rely on similar assistance in future and DCC has also offered its own assistance.
17. DCC confirmed to the Commissioner that the plans requested by the complainant are published on its website and are easily accessible. Assistance can be provided to view or print the document by attending the local library or its offices and this option has previously been offered to the complainant. Additionally, this information has already been made available to the complainant on a previous request – albeit possibly in a slightly different format.
18. The Commissioner is satisfied that the remaining information not disclosed within the scope of this request is both publicly available and easily accessible to the complainant on the DCC website, with or without assistance and that DCC has correctly relied on

Regulation 6(1)(b) to refuse to provide the information in the format requested.

Procedural matters

19. The Commissioner has noted the complainant's comments that DCC did not respond to his request within the statutory timeframes.

Regulations 5(2) of the EIR

20. Regulation 5(2) of the EIR states that: "information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request."

Regulation 6(2) of the EIR

21. Regulation 6(2) of the EIR states that, if the public authority chooses not to make the information available in the requester's preferred format, they must contact them to explain the reasons for this decision as soon as possible and no later than 20 working days after the date of receipt of the request.

Regulation 11(4) of the EIR

22. Regulation 11(4) requires a public authority to complete its reconsideration as soon as possible and in any event within 40 working days.
23. The complainant made the request for information on 27 January 2022. DCC did not provide its response until 16 March 2022, which falls outside the requirements in EIR to respond within 20 working days and has breached Regulation 5(2) and Regulation 6(2) of EIR. The public authority also breached regulation 11(4) of the EIR as it failed to carry out its internal review within 40 working days.
24. The Commissioner does not require DCC to take any further steps.

Right of appeal

25. 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

26. 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.
27. 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

Roger Cawthorne
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