

Environmental Information Regulation 2004 (EIR)

Decision notice

Date: 24 January 2023

Public Authority: Spelthorne Borough Council
Address: Knowle Green
Staines-upon-Thames
TW18 1XB

Decision

1. The Commissioner's decision is that Spelthorne Borough Council ("the Council") should have considered the request in this case under the EIR rather than FOIA.
2. The Commissioner requires the Council to take the following step to ensure compliance with the legislation:
 - Issue the complainant with a fresh response to their request that complies with the EIR.
3. The Council must take this step 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 the Act and may be dealt with as a contempt of court.

Request and response

4. The complainant made the following information request to the Council on 17 August 2022:

"All recorded information relating to:-

 1. the issue by Spelthorne Borough Council of a tree preservation order TPO277/2022 to include a list of who was sent a copy of this TPO, when it was sent and how it was sent.

2. The issue of any other tree preservation orders at all other properties in Ferry Lane, including Ladye Place, Riverbank Cottage, Bank Cottage. In accordance with the definition of recorded information I require all official documentation, any drafts, emails, notes or any other information held in this matter.”
5. The Council’s final position was that the requested information was exempt from disclosure under section 12 of FOIA.

Reasons for decision

6. This reasoning covers why the requested information is environmental information that the Council should have considered under the EIR.
7. Regulation 2(1) of the EIR describes environmental information as being information 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)...as well as measures or activities designed to protect those elements;
 - (d) reports on the implementation of environmental legislation;
 - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
 - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);

8. The requested information in this case is associated with Tree Preservation Orders. This therefore concerns measures likely to affect land.
9. The Commissioner is therefore satisfied that this information falls within scope of the EIR and is environmental information. The Council should therefore have handled the request under the EIR and not FOIA.

Right of appeal

10. 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

11. 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.
12. 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

Michael Lea
Team Manager
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Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF