

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

### **Decision notice**

**Date:** 16 May 2024

**Public Authority:** Northumberland County Council  
**Address:** County Hall  
Morpeth  
NE61 2EF

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

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1. The complainant has requested information held by Northumberland County Council (the council) about various planning matters.
2. The council initially responded to the request under the subject access provisions of the Data Protection Act 2018 (DPA 2018). After receiving further correspondence from the complainant, it then considered the request under the EIR.
3. Whilst the council released some information to the complainant, it advised that it considered the remaining information held to be subject to the exception at regulation 12(5)(f) (interests of the information provider) of the EIR. During the Commissioner's investigation, the council then revised its position and released the withheld information to the complainant.
4. The Commissioner's decision is that, on the balance of probabilities, the council has provided the complainant with all of the information held that is relevant to the request.
5. However, as the council failed to provide the relevant information within 20 working days of receipt of the request, and then failed to conduct an internal review within 40 working days, the Commissioner has found a breach of regulation 5(2), and regulation 11(4), of the EIR, respectively.
6. The Commissioner does not require the council to take any steps as a result of this decision notice.

## Request and response

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7. On 20 July 2023, the complainant wrote to the council and requested information in the following terms:

“(i) As per the Freedom of Information Act 2000 I would like to be supplied with all information pertaining to both this complaint (Stage 2 complaint [reference number redacted] and planning breach request I submitted [reference number redacted]). And,

(ii) As per the Freedom of Information Act 2000 I would like to be supplied with all information pertaining to both this complaint (Stage 2 complaint [reference number redacted] and the original planning application I submitted [reference number redacted]).”

8. The council initially dealt with the complainant’s correspondence of 20 July 2023, as a subject access request, and on 22 August 2023, provided the complainant with copies of their personal information.
9. In correspondence which the complainant sent to the council on 23 August 2023, they advised that their original request was made under the Freedom of Information Act 2000 (FOIA), and was not intended to be a subject access request. The complainant said that they did not require information that had already been provided to them as part of the various planning processes, but did want copies of all of the remaining information held in respect of the relevant planning application, and potential planning breach, referred to in their original request.
10. The council subsequently explained to the complainant why it had considered their correspondence of 20 July 2023, as a subject access request. The council also confirmed why it considered the complainant’s correspondence of 23 August 2023, to be a request for environmental information (under the EIR), rather than a FOIA request.
11. On 12 September 2023, the complainant then stated that they required the following information.

“I would like to see ALL information held by the council for:

[Planning reference redacted/FUL] (planning application)

[Planning enforcement reference redacted]ENDEVT] (suspected planning breach)

[Complaint 1 reference and complaint 2 reference redacted] (planning complaints).”

12. On 3 October 2023, the council provided the complainant with copies of some information, including email correspondence. The council also provided the complainant with access to information contained within a SharePoint folder, and a link to the planning pages of its website.
13. The council advised the complainant that it was withholding the responses issued in relation to the two planning complaints referred to in the request under regulation 12(5)(f) of the EIR. The council went on to advise the complainant that it considered the public interest to favour maintaining the exception at regulation 12(5)(f) in respect of the withheld information.
14. On 3 October 2023, the complainant requested an internal review. On 5 October 2023, the council requested further clarification from the complainant about the reasons why they were dissatisfied with its handling of their request.
15. The complainant responded on 11 October 2023, setting out their concerns about the time it took the council to respond to the request, and also the decision to consider the request under the EIR, rather than the FOIA. The complainant also said that they considered the council's refusal notice to have been "vague" regarding the reasons for withholding information.
16. Following the Commissioner's intervention, on 12 January 2024, the council provided its internal review response. Whilst it did not change its position, or provide the complainant with copies of any additional information, it did provide further explanations about how it had handled the request.
17. On 15 March 2024, the council then revised its position, providing the complainant with the information that had been withheld under regulation 12(5)(f) of the EIR.

### **Scope of the case**

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18. The complainant remains concerned that the council may not have provided all of the information held that is relevant to their request.
19. The complainant has said that a lot of the information which has been released is already in their possession as a result of other processes that have taken place. They believe that the council may not have properly considered their request for all of the information held that is relevant to the planning, enforcement, and complaint references set out in their original request.

20. The complainant has also raised concerns about the council's decision to consider their request under the EIR, rather than FOIA, and the timeliness of the council's responses to their request.
21. The Commissioner will therefore make a decision on the following:
  - Whether FOIA, or the EIR, is the correct information access regime.
  - Whether, on the balance of probabilities, the council has identified and provided all of the information held that is relevant to the complainant's request.
  - Certain procedural matters, as requested by the complainant.

## **Reasons for decision**

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### **Is the requested information environmental?**

22. Regulation 2(1) of the EIR defines 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);

23. The complainant's request relates to planning applications and the redevelopment of property and land. The Commissioner is satisfied that such information is a measure affecting the land, and landscape, and is therefore environmental information for the purposes of the EIR.

**Regulation 5(1) – duty to make environmental information available on request**

24. Regulation 5(1) provides that a public authority that holds environmental information shall make it available on request. This is subject to any exceptions that may apply.
25. In those circumstances where a requester disputes whether a public authority has provided all of the environmental information that it holds, it is important that the public authority is able to demonstrate that it has carried out reasonable searches to identify all the relevant information.
26. The Commissioner is not required to prove beyond doubt that a public authority does, or does not, hold further information. When determining a complaint, the Commissioner makes a decision based on the civil standard of the 'balance of probabilities' – that is, more likely than not.
27. The council has confirmed that when conducting its searches, the relevant planning, enforcement and complaint references were used as the key search terms. The council has said that it has searched the planning application folders, planning enforcement folders, relevant complaint folders and the email inboxes of the officers who have been involved in the relevant planning applications, enforcement and complaints.
28. The council goes on to say that as the planning and complaints processes are legislative based, it is required to retain information and ensure that it has been stored correctly. The council has said that, given this, there are no other folders, or areas that information within the scope of the request would be stored, that have not already been identified by the searches carried out.
29. The council has said that it considers that it has provided all of the information held that is relevant to the request, including both the information which is considered to be the complainant's personal data (provided under the subject access provisions of the DPA 2018), and "over 30 attachments" containing information which it has disclosed under the EIR.

30. The council has said that, to date, the complainant has not provided details of any specific information that they consider should have been supplied in response to the request, and that should they wish to do so, it would be happy to carry out further checks to try and identify whether such information is held.
31. The Commissioner is satisfied that the council has conducted reasonable and proportionate searches to identify all of the information held that is relevant to the complainant's request.
32. The Commissioner has seen no compelling evidence indicating that further information is held, and therefore finds that, on the balance of probabilities, the council does not hold further information falling within the scope of the request.

### **Procedural matters**

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33. The complainant asked the council to consider their request of 20 July 2023, under FOIA. The council said that it initially considered that the only information likely to be held would be the personal data of the complainant and that given this, it initially dealt with the complainant's correspondence as a subject access request.
34. The Commissioner acknowledges the reasons given by the council as to why it considered the request under the DPA 2018, and that when doing so, it was attempting to assist the complainant. However, in this case, the request relates to a planning matter (where it is more likely than not that information which is not the personal data of the complainant will also be held). In addition, the complainant explicitly stated that they were making a request under FOIA for all information held.
35. Where it appears that a request may cover more than one access regime, the public authority should consider the relevance of the DPA 2018, FOIA and the EIR and respond under each relevant access regime within the statutory timescales from the date of receipt of the request.
36. The Commissioner considers that the council should have identified upon receipt of the request that it was likely to cover both the personal information of the complainant and environmental information.
37. Furthermore, in the Commissioner's view, the 'clarification' provided by the complainant on 12 September 2023, about what they still required was, in essence, the same request that they made on 20 July 2023.
38. The council did not provide the environmental information it considered relevant to the complainant's request until 3 October 2023. As this was

not within the statutory 20 working days of the request being received, the Commissioner has found a breach of regulation 5(2) of the EIR.

39. The Commissioner has also found a breach of regulation 11(4) of the EIR as the council also failed to provide its internal review response within the statutory 40 working days.

## **Right of appeal**

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40. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

41. 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.
42. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Suzanne McKay**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
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