

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 08 May 2024

Public Authority: Dorset Council
Address: County Hall
Colliton Park
Dorchester
Dorset
DT1 1XJ

Decision (including any steps ordered)

1. The complainant requested information regarding bins belonging to a named property causing an obstruction on the public highway, including CCTV footage. Dorset Council ('the Council') provided some information, however the complainant considers that the Council holds additional information which it has failed to disclose.
2. The Commissioner's decision is that the Council has not complied with its obligations under regulation 5(1) of the EIR. The Council's failure to conduct an internal review also represents a breach of regulation 11(4), whilst its failure to disclose some information until during the Commissioner's investigation is a breach of regulation 5(2) of the EIR. However, the Council was entitled to redact a small amount of personal data under regulation 13 (personal information) from a table disclosed during the Commissioner's investigation.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - disclose all relevant CCTV footage to the complainant.
4. The public authority must take these steps within 30 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

5. On 14 September 2023, the complainant wrote to the Council and requested the following information:

“Please can I have a copy of all information held about bins belonging to [named property] causing obstructions on the public highway. This includes any CCTV footage you hold.”
6. The Council responded on 12 October 2023. It provided some information and stated that it had never had any reports or complaints about the containers causing any obstructions.
7. The complainant completed an Information Request Feedback Form dated 13 October 2023, which appears to be a request for an internal review.
8. The Council does not however appear to have conducted an internal review.

Scope of the case

9. The complainant contacted the Commissioner on 12 December 2023 to complain about the way their request for information had been handled. They stated that the Council has not responded to, or refused their request for it to conduct an internal review. The complainant further informed the Commissioner that the Council has stated that it does not hold the requested information, however they disagree and believe the Council holds more information than it has sent.
10. The Commissioner notes that this request appears to be a follow on to previous requests and complaints related to an accident the complainant sustained from apparently slipping on a bin lid.
11. The Commissioner notes that the Council disclosed some additional information to the complainant during the course of his investigation.
12. The scope of the Commissioner's investigation is solely to consider the Council's response to this particular request. Any consideration of previous requests is beyond the scope of this notice, whilst any comment on the complainant's wider complaint to the Council is beyond the remit of the Commissioner. The Commissioner will therefore limit his

investigation to determine whether the Council has complied with its obligations under regulations 5(1) and 13 of the EIR.

Reasons for decision

Would the requested information be environmental?

13. 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);
14. The Commissioner believes that the requested information is likely to be information on the land (a) and waste (b) and activities (bins causing an obstruction (c) likely to affect those elements of the environment. For procedural reasons, he has therefore assessed this case under the EIR.

Reasons for decision

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

15. Under regulation 5(1) of the EIR, a public authority must make environmental information available on request if it holds the information and it is not subject to an exception.
16. In scenarios where there is some dispute between whether the public authority holds additional relevant information, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
17. In other words, in order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any additional information which falls within the scope of the request (or was held at the time of the request).
18. The Commissioner notes, that in its response to the request, the Council provided a table/screenshot showing delivery of various refuse receptacles to the named property for its collection service. The Council also confirmed that it had never had any reports or complaints about the containers causing any obstructions. It further stated that it has had no service issues, missed collections or anything else regarding the property other than the incident regarding the complainant. The Council further informed the complainant that the CCTV footage had previously been requested and disclosed in response to their SAR request.
19. As previously stated, the complainant considers that the Council holds additional relevant information falling within the scope of their request than it provided with its response. The Commissioner therefore asked the Council to provide details of the searches undertaken, and to confirm why they would have been likely to retrieve all relevant information.
20. The Council informed the Commissioner that the screenshot disclosed in its response was taken from the Waste Service database (Bartec), which holds waste service details for all properties within its boundaries. To find the information in the screenshot, the Waste Service team searched on postcode and house number, and confirmed at the time of the request, that the screenshot represented the information it holds for the specified address.

21. However, during the course of the Commissioner's investigation, the Council informed the Commissioner that its Waste Service team had subsequently provided additional information held on Bartec which it had not provided at the time of the request. The Commissioner understands that this information has now been disclosed to the complainant (18 April 2024). However, the Council redacted a small amount of information on the basis of regulation 13 (personal data) of the EIR which is discussed in more detail later in this notice.
22. The Council further confirmed that everything relating to the Waste Service team is recorded on their Bartec system, and that everything held on the system relating to the specified property has now been identified.

CCTV footage

23. Having seen reference to CCTV footage from the waste vehicle and other camera sources, the Commissioner specifically queried this with the Council.
24. During the course of the Commissioner's investigation, the Council confirmed that it had discovered that there were three cameras with footage of the street in question:
 - the camera in the waste service vehicle,
 - two public space cameras.

The waste vehicle camera footage

25. The Council informed the Commissioner that its Waste Service area knew which vehicle collected recycling in the area on the last scheduled collection date prior to the complainant's accident. The Council's Waste Service team removed the hard drive from the vehicle which was viewed by the Supervisor to find the relevant footage.
26. The Council further confirmed that this had been done some weeks prior to receipt of this particular request and the complainant had already viewed the footage outside of the FOIA regime at the local waste depot.
27. As the complainant had already viewed this footage, the Council confirmed that it was not sent as part of its response to this request.
28. The complainant considers that they should have received footage from the vehicle for the whole period of his request as opposed to just the last collection date prior to their accident. The Commissioner has considered the request as specified in paragraph 5 of this notice and is mindful that it did not stipulate any time period. It is possible that the

complainant is confusing this request with a previous request however, which asked for CCTV footage for the period from 29 April 2023 to 29 May 2023, but is not the subject of this complaint, and not therefore within the remit of the Commissioner's investigation.

Public spaces CCTV footage

29. The Council informed the Commissioner that during its handling of the request, it had inadvertently overlooked the fact that it also has a "public space CCTV camera at a close by location in the street, so footage from this was not considered as part of the FOI request."
30. Following further queries, the Council informed the Commissioner that there are actually two public space cameras, the second one located on a lamppost on the corner of Mitchell Street and Maiden Street.
31. The Council also confirmed that prior to this request, it had disclosed footage (on 29 and 30 June 2023) from both the public space cameras in response to the complainant's Subject Access Request (SAR), and as such, it had not therefore provided this information in response to this request. However, it also became apparent during the Commissioner's investigation that the Council also holds footage dated 29 May 2023 from the second camera that the complainant has not yet seen.

The Commissioner's conclusion

32. It is clear from the above account, that the Council did not provide all relevant information it held at the time of this request, both in terms of information held about the property from the Council's Bartec system and the various CCTV footage.
33. However, having considered details of the Council's Waste Service team's record keeping, and based on the balance of probabilities, the Commissioner is satisfied that the Council has now identified and disclosed to the complainant, all relevant information it held at the time of the request on its Bartec system.
34. With regard to the various CCTV footage, the Commissioner accepts that whilst the complainant is yet to see all relevant footage, based on the balance of probabilities, the Council has now identified all CCTV footage relevant to the request.
35. Whilst the Commissioner understands the request was not received in isolation, but against a background of previous requests, a complaint and an insurance claim, the Commissioner expects the Council to accurately identify all relevant information it holds at the time of a request, and to either disclose it or cite a valid exception.

36. On the basis that the Council did not provide all relevant information it held at the time of the request, the Commissioner has no option but to record a breach of regulation 5(1) of the EIR.

Regulation 13 - personal data

37. Regulation 13(1) provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in regulation 13(2A), 13(2B) or 13(3A) is satisfied.
38. In this case the relevant condition is contained in regulation 13(2A)(a)¹. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
39. The Council has withheld some minor details in relation to bin collection at the named property from the table it provided to the complainant during the Commissioner's investigation.
40. The Commissioner is satisfied that the requested information is the personal data of the owners or occupiers of that property as the individual(s) are linked to that property and it is therefore of biographical significance to them.
41. The Commissioner acknowledges that the complainant may consider that they have a legitimate interest in disclosure of the withheld information.
42. However, the Commissioner must balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms.
43. In this case, the Commissioner is satisfied that a reasonable individual would not expect details regarding their bin collection to be disclosed to the wider world in response to an EIR request.
44. The Commissioner further considers that disclosing details about their private property when it is not expected would be seen as intrusive and likely to cause distress.

¹ As amended by Schedule 19 Paragraph 307(3) DPA 2018.

45. The Commissioner does not consider there to be any wider public interest in disclosure of the withheld information.
46. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that disclosing the information in question would contravene a data protection principle as it would not be lawful.
47. Given the above conclusion that disclosure would be unlawful, the Commissioner doesn't need to go on to consider separately whether disclosure would be fair or transparent.
48. The Commissioner's decision is therefore that the data is exempt under regulation 13(1) by virtue of 13(2A)(a). It follows that the Council is entitled to withhold this information.

Procedural matters

Regulation 5(2) - Duty to make available environmental information on request

49. Regulation 5(1) of the EIR provides a general right of access to environmental information held by public authorities. Whilst regulation 5(2) concerns the timescales for response and states:

"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."

50. The Commissioner notes that the complainant submitted their request on 14 September 2023. However, the Council's recent disclosure of additional information (18 April 2024) has clearly breached the required timescales for disclosure under regulation 5(2) of the EIR.

Regulation 11 – Representations and reconsideration

51. Regulation 11(4) of the EIR requires a public authority to complete a reconsideration (internal review) of its response within 40 working days of being asked to do so.
52. The complainant requested an internal review via the Council's 'Information Request Feedback' form on 13 October 2023. However, the Council do not appear to have undertaken a review.
53. In failing to undertake an internal review, the Commissioner has recorded a breach of regulation 11(4) of the EIR.

Right of appeal

54. 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

55. 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.
56. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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