

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 28 May 2024

Public Authority: Wirral Metropolitan Borough Council
Address: Town Hall
Brighton Street
Wallasey
Wirral
CH44 8ED

Decision (including any steps ordered)

1. The complainant has requested information about correspondence with the RNLI. Wirral Metropolitan Borough Council ("the Council") disclosed information in response. It subsequently acknowledged in its internal review outcome that additional information was likely to be held, but did not disclose it, or issue a valid refusal notice for any exception it intends to rely on.
2. The Commissioner's decision is that, on the balance of probabilities, the Council holds additional information which falls within the scope of the request.
3. The Commissioner requires Council to take the following steps to ensure compliance with the legislation.
 - Conduct new searches for any additional information falling within scope of the request, and issue a fresh response to the request in which any additional information is either disclosed, or a valid refusal notice issued for any exception it intends to rely on.
4. The Council 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 20 October 2023, the complainant wrote to the Council and requested information in the following terms:

 "all correspondence between Wirral Metropolitan Borough Council and The Royal National Lifeboat Institution concerning all aspects of Hoylake and Meols beaches for the years 2021-2023 in totality."
6. The Council responded on 27 November 2023. It disclosed information, subject to redactions under section 40(2).
7. On 28 November 2023, the complainant wrote to the Council to explain that they were dissatisfied with the response, on the basis that only a limited amount of information had been disclosed.
8. Following an internal review the Council wrote to the complainant on 10 January 2024. It stated that further information had been identified and was being reviewed. The Council explained that it was unable to provide a date by which this would be done.

Scope of the case

9. The complainant contacted the Commissioner on 27 February 2024 to complain about the way their request for information had been handled, and specifically that the Council held additional information that had not been disclosed. As of the date of this decision, the Commissioner understands that the Council has not provided any further response to the complainant.
10. The Commissioner considers the scope of this case to be whether the Council holds additional recorded information.

Reasons for decision

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

11. Regulation 5(1) of the EIR states that any person making a request for information is entitled to have that information communicated to them. This is subject to any exceptions that may apply.
12. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information

that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.

13. In other words, in order to determine such complaints, the Commissioner must decide whether on the balance of probabilities a public authority holds any – or additional – information which falls within the scope of the request (or was held at the time of the request).

The Commissioner's conclusion

14. The Commissioner has reviewed the correspondence between the parties.
15. The Commissioner notes that the Council has clearly indicated in its internal review outcome that searches have revealed further recorded information held that may fall within scope of the request, and that the Council would write further to the complainant about this information. The complainant has confirmed to the Commissioner that, by the date of this decision, they have not received any further correspondence from the Council in respect of this further recorded information.
16. It is therefore reasonable for the Commissioner to conclude, on the of probabilities, that the Council holds additional information that falls within the scope of the request.
17. The Commissioner therefore requires the Council to conduct new searches for any additional information falling within scope of the request, and issue a fresh response to the request in which any additional information is either disclosed, or a valid refusal notice issued for any exception it intends to rely on.

Right of appeal

18. 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

19. 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.
20. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Daniel Perry
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Wycliffe House
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