

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

Date: 2 September 2024

Public Authority: East Riding of Yorkshire Council
Address: County Hall
Cross Street
Beverley
East Yorkshire
HU17 9BAX

Decision (including any steps ordered)

1. The complainant requested information relating to a planning application. East Riding of Yorkshire Council (the "Council") initially withheld the information but during the Commissioner's investigation it disclosed some information and confirmed that no further information was held.
2. The Commissioner's decision is that the Council has disclosed all the information it holds that falls within the scope of the request.
3. The Commissioner does not require further steps.

Request and response

4. On 6 December 2023, the complainant wrote to East Riding of Yorkshire Council (the "Council") and asked for the following information:

"In respect of Planning Application 22/03331/CM - document reference "SITE SELECTION REPORT FROM BEVERLEY HRC TEAM" Please may I request the following information in respect of the above document which was published in December 2023. Please provide a copy of all internal ERYC and external advisory correspondence, meeting minutes, memos, emails, and the like, which relate to this site selection report, with specific reference to the reasons for and advice received in connection with the change in the decision by ERYC to publish this report"
5. The Council responded on 8 February 2024 and confirmed that it was withholding the information under the exception for internal communications (regulation 12(4)(e)).
6. Following an internal review the Council wrote to the complainant on 11 March 2024. It stated that it was maintaining its position.

Scope of the case

7. On 12 March 2024 the complainant contacted the Commissioner on to complain about the way their request for information had been handled.
8. During the Commissioner's investigation the Council revised its position, dropping its reliance on regulation 12(4)(e) and disclosing information to the complainant. It also confirmed that it did not hold any further information.
9. Following this disclosure the complainant raised concerns that the Council had not provided all the relevant information that it holds. The Commissioner has set out his conclusions in this regard below.

Reasons for decision

Would the requested information be environmental?

10. 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);
11. If held, the requested information, which relates to a planning matter, is likely to be information on measures as defined by regulation 2(1)(c). For procedural reasons the Commissioner has, therefore, assessed this case under the EIR.

Regulation 12(4)(a) – information not held

12. Regulation 12(4)(a) of the EIR states that a public authority may refuse to disclose information “to the extent that it does not hold that information when an applicant’s request is received”.
13. The complainant has raised concerns that the information disclosed by the Council during the Commissioner’s investigation does not represent all the relevant information held.
14. Where there is some dispute between the amount of information identified 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 decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request). For clarity, the Commissioner is not expected to prove categorically whether the information is held.

15. During the course of his investigation the Commissioner asked the Council to comment on the grounds given by the complainant for their belief that the Council holds additional information.
16. The Council confirmed that it searched all project files and emails of relevant officers and that staff consultation also took place with the project manager. It explained that search terms included a variety of key words such as Household Recycling Centre, HRC, Site Selection Report and confirmed that it was satisfied that no additional information relevant to the original request was held.
17. The Council explained that the matter in question was an officer decision with arrangements being made within the team and that there are no other records relating to this matter. The Council has explicitly confirmed that, with reference to the request parameters, it did not seek any external advice on this matter.
18. The Commissioner appreciates why the complainant might believe that further information on this matter would be held. However, given the explanations provided by the Council, the searches it carried out and the very specific parameters of the request, the Commissioner is satisfied that the Council does not hold further information.

Right of appeal

19. 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

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

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