

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

### **Decision notice**

**Date:** 9 April 2021

**Public Authority:** Norwich City Council  
**Address:** City Hall  
St Peter's Street  
Norwich  
NR2 1NH

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

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1. The complainant requested from Norwich City Council ("the Council") information relating to the amount it has spent on a tennis court project.
2. The Commissioner's view is that the request should have been handled under the Environmental Information Regulations ("the EIR") as opposed to the Freedom of Information Act ("the Act").
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
  - Issue a fresh response to the request under the EIR.
4. The Council must take these steps 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**

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5. The complainant wrote to the Council and requested information in the following terms:

*"Please confirm*

*1) The exact amount that Norwich City Council is planning to spend on its Heigham Park tennis court project including a breakdown of the costs.*

*2) The amount of revenue that Norwich City Council projects to earn from JUST the Heigham Park tennis courts.*

*3) The number of those objecting to the plans throughout all of the various planning processes.*

*4) The number of those supporting the plans throughout all of the various planning processes."*

6. The Council responded on 13 July 2020. It stated:

*"1) The delivery of tennis at Heigham Park is one part of a larger project involving Lakenham Rec. There are no specific costs at this point in time as the project has to be tendered for. The tender costs will be for the delivery of the whole project and Heigham Park cannot be viewed in isolation due to costings being affected by economies of scale.*

*2) The projection for Heigham Park is for income to the council from Norwich Parks Tennis to increase from £1,800 to 9,000 over five years."*

7. For points 3 and 4 it provided links to the planning portal where the requested information could be located.

8. On 13 July 2020 the complainant wrote to the Council and requested an internal review in relation to part 1 of the request. She stated, *"I feel that you are being deliberately obscure and very unreasonable concerning question 1 in particular – this is particularly relevant and of public and taxpayers interest at a time when council funding is under extreme pressure"*.

9. Following an internal review the Council wrote to the complainant on 16 September 2020. It maintained its position and stated that it would not be able to provide an accurate figure in relation to part one of the request. It stated, *"when the procurement is completed and if it is possible to separate out the cost for Heigham Park this can be made available."*

## Scope of the case

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10. The complainant contacted the Commissioner on 20 October 2020 to complain about the way her request for information had been handled. She stated that she considered that the information requested at part one of her request should be made available.
11. The scope of this notice is to consider whether the Council has handled the request in accordance with the correct information access regime.

## Reasons for decision

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### Regulation 2 - Is the information environmental?

12. Environmental information must be considered for disclosure under the terms of the EIR rather than the FOIA.
13. Regulation 2(1)(c) of the EIR defines environmental information as any information on "*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 [2(1)](a) and (b) as well as measures or activities designed to protect those elements.*"
14. The request in this case is for information relating to planning matters. The Commissioner is satisfied that the requested information is therefore on a measure that would or would be likely to affect the elements listed in regulation 2(1)(a) and is, therefore, environmental under regulation 2(1)(c).
15. It is important to ensure that requests for information are handled under the correct access regime. This is particularly important when refusing to provide information, since the reasons why information can be withheld under FOIA ("the exemptions") are different from the reasons why the information can be withheld under the EIR ("the exceptions"). In addition, there are some procedural differences which affect how requests should be handled.
16. The Commissioner's view is that the Council were required to respond to this request under the EIR and did not do so. The Council is therefore required to take the step as outlined at paragraph three above.

## Other matters

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

17. Regulation 5(1) of the EIR states that “*a public authority that holds environmental information shall make it available on request.*” This is subject to any exceptions that may apply.
18. The Council’s original response to this request did not fully comply with the provisions of either the FOIA or the EIR in that it did not:
  - state whether or not the information is held in a recorded form; or
  - supply the applicant with a copy of the information; or
  - issue a refusal notice which complies with the legislation.
19. The Commissioner reminds the Council that both the FOIA and the EIR entitle applicants to be informed whether the information requested is held and, if so, to have that information communicated or made available to them (assuming no exemptions/exceptions apply).

## Right of appeal

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

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

21. 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.
22. 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 .....**

**Ben Tomes  
Team Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**