

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 23 January 2023

Public Authority: Gateshead Council
Address: Civic Centre
Regent Street
Gateshead
NE8 1HH

Decision (including any steps ordered)

1. The complainant requested information with regards to ownership of land. Gateshead Council (the council) identified that the majority of the request was not a request for recorded information, but were questions asking for explanations or opinions, and so it was not required by the EIR to respond.
2. For the part that was a request for recorded information, the council initially stated the information was not held. At internal review, it amended its response to refuse the request as vexatious under section 14(1) of the Freedom of Information Act 2000 (the FOIA).
3. During the Commissioner's investigation, the council determined the request should have been handled under the EIR, and no longer considered the request vexatious. It instead refused the request under regulation 12(4)(a) of the EIR – information not held.
4. The Commissioner's decision is that the information is not held and therefore regulation 12(4)(a) of the EIR is engaged.

Request and response

5. On 11 October 2022, the complainant made the following information request:

“1.If the council do not own land (a random area of land for example) and wish to take governance (i.e. they will maintain the land) over that land does the council need to ask the landowner for permission or do the council need to inform the landowner?

2. For an "enforcement" for said land does the council need to provide proof of governance over some land or is proof not needed?

3. If proof is required (Q2) and governance was not proven is the enforcement null and void?

4. Like Q2 and Q3 If proof was required and no proof exists does the land therefore not fall under the governance of the council and thus would be classified as 'open space'

5. Will deeds of the land show who governs the land?

6. Can the council have governance over land but refuse to maintain it?

7. Finally, I would like to request a copy of a petition in the estate, in particular, the petition asking Gateshead council to take "responsibility" over spare land that was not adopted, I need a copy of what was asked and the answer back as I only have partial paperwork including the screenshot below”

6. The council responded on 9 November 2021 the council responded stating that for parts 1 to 6 it holds no information and is not required to provide an opinion.
7. For part 7 of the request the council stated it does not hold the requested petition.
8. The complainant requested an internal review on the same day and the council provided its internal review response on 11 March 2022 amending its response to refuse the request under section 14(1) of the FOIA, determining that the request was vexatious.

Scope of the case

9. The complainant contacted the Commissioner on 26 May 2022 disputing the council's refusal of his request.
10. During the Commissioner's investigation, the council reconsidered its response and confirmed it should have handled the request under the EIR and it was no longer relying on the request being vexatious. It instead issued a further response to the complainant refusing part 7 of the request under regulation 12(4)(a) of the EIR – information not held.
11. For parts 1 to 6, it again stated that the complainant has not requested recorded information, but asking for opinions and explanations.
12. The Commissioner has discussed the request with the complainant and has explained that part 1 to 6 are not requests for recorded information, and so the Commissioner will not be considering them in his decision notice.
13. The complainant has asked that the Commissioner investigate whether the information requested in part 7 is held.
14. The scope of the following analysis is whether regulation 12(4)(a) of the EIR is engaged in relation to part 7 of the request.

Reasons for decision

Regulation 12(4)(a) of the EIR – Information held/ not held

15. Regulation 5(1) of the EIR requires a public authority that holds environmental information to make it available on request.
16. Regulation 12(4)(a) of the EIR allows a public authority to refuse to provide the requested information if it does not hold it at the time of the request being received.
17. 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).
18. In this case the complainant has requested a specific petition. The council has told the Commissioner that the council has adopted a

Petition Scheme, in accordance with the requirements of the Local Democracy, Economic Development and Construction Act 2009, which sets out how the council will respond to petitions it receives.

19. However, the council states that there is no record of the specific petition that the request relates to, being received. The council has also stated that its Planning Enforcement and Planning Development have checked for petition submissions and have not found any which are requesting the council 'take responsibility' for land in the area of the specified address.
20. The Commissioner has considered the council's response above, and it appears to have searched for the information in the most plausible areas within the council. The Commissioner is satisfied, on the balance of probabilities, that the requested information is not held
21. The Commissioner therefore finds that the council is correct to refuse the request under regulation 12(4)(a) of the EIR.

Regulation 12(1)(b) of the EIR – Public Interest Test

22. Regulation 12(1)(b) of the EIR requires a public interest test to be carried out if a request is refused under any of the exceptions set out under regulation 12 of the EIR.
23. However, as no information has been found to be held, the Commissioner can only find that the public interest in maintaining the exception at 12(4)(a) of the EIR outweighs any public interest in disclosure, simply because there is no information to disclose.

Right of appeal

24. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

25. 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.
26. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF