

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

Decision notice

Date: 10 October 2011

Public Authority: Bishop Middleham and Mainsforth Parish
Council

Address: 54 High Street
Tow Law
Bishop Auckland
County Durham
DL13 4DP

Decision (including any steps ordered)

1. The complainant requested a full copy of the winning tender with the council for a grounds maintenance contract.
2. The Commissioner's decision is that the council applied the Freedom of Information Act when considering the request but the information was in fact environmental information. The council should therefore have considered the information under the Environmental Information Regulations 2004.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - To consider the request for information under the Environmental Information Regulations 2004 and to issue a valid refusal notice or to disclose the relevant information.
4. The public authority 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 (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 6 April 2011 the complainant wrote to Bishop Middleham and Mainsforth Parish Council and requested information in the following terms:

" [The complainant] as part of its review process will be analysing the non award of this contract then see what lessons can be learnt from it in the future. I should therefore be obliged if under the Freedom of Information Act you would supply me with a full copy of the winning tender submission in order that full analysis can take place."

6. The council responded on 26 May 2011. It stated that the information was exempt from disclosure under the exemption protecting commercial interests stipulated in the Freedom of Information Act.
7. The council did not have a review procedure in place, however it confirmed to the Commissioner that the full council had reconsidered the request and the council's response and that its decision remained the same on 26 July 2011.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He asked the Commissioner to consider whether the information he requested should have been disclosed to him.

Reasons for decision

9. Regulation 2 of the EIR states that environmental information is any 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;*
 - (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) and (b) as well as measures or activities designed to protect those elements;

10. The Commissioner has considered the information falling with the scope of the request. The withheld information relates to a contract to maintain parish grounds. It includes details such as the prices charged for grass cutting, planting flowers and the general maintenance of areas within the parish. The Commissioner therefore considers that the successful tender is information on a measure or an environmental agreement which is likely to affect the factors mentioned in (a) above.
11. In light of this the Commissioner considers that the information is environmental information. Given this his decision is that the council should have considered the request under the Regulations rather than under the Act.

Right of appeal

12. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

13. 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.
14. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF