

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

Date: 22 November 2016

Public Authority: Manchester City Council
Address: Town Hall
Manchester
M60 2LA

Decision (including any steps ordered)

1. The complainant has requested consultation responses and other associated information regarding the planning application 108705/FO/2015/C1 at Manchester City Council (the council). The council failed to issue a valid refusal notice, responding instead to say that the information could not be viewed and would not be published until the planning decision was made. At internal review the council provided some information and arrangements were made to view the remaining information. The council therefore provided the information outside the prescribed time frame. The Commissioner is satisfied that all the information within the scope of the request has been provided or made available.
2. The Commissioner's decision is that the council failed to comply with regulation 14 in failing to issue a valid refusal notice. It also breached regulation 5(2) in providing the requested information outside the required time frame of 20 working days. Finally, the Commissioner finds that the council has complied with regulation 5(1) as it has provided or made available all information within the scope of the request, and has complied with its obligations under regulation 9.
3. The Commissioner does not require the council to take any steps in this case as the information has been provided or made available.

Request and response

4. On 7 September 2015 the complainant made the following request for information:

"In the absence of documents on the website, can you please as provide me as a matter of urgency with a copy of all consultation responses received to date, further correspondence and submissions sent or received by the city council in dealing with this application, including any material relevant to the council carrying out its duty under s66 of the Listed Buildings and Conservations Areas Act 1990."

5. A Senior Planner at the council responded on 7 September 2015 advising that the council does not make consultation responses public prior to a decision being made. On the same day, the complainant asked if it was possible to view the information in situ. The council replied that it was not.
6. The complainant requested an internal review on 11 April 2016. The council provided the outcome of this on 9 May 2016, providing a list of consultation responses for the planning application in question. The complainant then viewed the consultation responses at the council on 9 May 2016. Copies of additional consultation responses were also provided on 10 May 2016.

Scope of the case

7. The complainant contacted the Commissioner on 27 May 2016 to complain about the way the request for information had been handled. The complainant was concerned that it had not been provided with a complete response, and that it appeared that some consultation responses had not been provided. It also complained about the general way in which the request had been handled and indicated that it considered that the council had breached some procedural regulations.
8. The Commissioner considers the scope of the case to be to determine whether all the requested information has been provided, and in addition, record any procedural breaches of the EIR.

Reasons for decision

Regulation 5 – Duty to make available environmental information on request

9. Regulation 5(1) of the EIR requires a public authority that holds environmental information to make it available on request.

10. Regulation 5(2) requires that the information is made available as soon as possible and no later than 20 working days after the date of receipt of the request.
11. The council's initial response to the complainant on the same date as the request simply stated that the information would not be made public until the planning decision was made. It also refused the complainant access to the information.
12. In the internal review dated 9 May 2016, the council advised the complainant that the requested information was available to view through the publication scheme, either through public access or viewing the planning file. The complainant confirms that it attended the council on that day to view the consultation responses, but was informed that not all were available as some had been moved to another location. The council then provided the remaining information on 10 May 2016.
13. However, the complainant maintains that not all consultation responses have been provided. In particular the complainant cites correspondence contained within the Environmental Statement between the Environmental Protection Officer and the applicant which it argues suggests consultation responses pre-dating March 2015. It has also raised specific concerns that noise consultation information has not been provided.
14. The council has considered this point. It states that the application was submitted in April 2015, and the consultation took place in July 2015. It has focussed on the wording of the request and argues that as it asks for information sent or received by the council "*dealing with*" the application, information pre-dating the submission of the application is not included within the scope.
15. The council has also explained that it does not consider that the email correspondence within the Environmental Statement referred to by the complainant indicates that other consultation responses predating March 2015 exist. It has highlighted that the correspondence in question starts on 2 March 2015 with the acoustic consultants introducing themselves, and having considered it, can see nothing which suggests that any prior correspondence was exchanged. The council states that it holds no further information in respect of this request, and this includes consultation responses on the issue of noise.
16. In addition to addressing the specific concerns of the complainant in relation to missing information, the council has also provided the Commissioner with details of the searches it has undertaken in relation to this request, and the likely locations of information within the scope.

17. It advised that the starting point for a search for information relating to any planning application will always be the planning file. It advised that for current or recent applications, this will be a paper file. In addition to the paper planning file, the search also covers relevant case officers' emails as most of the responses to planning applications are received electronically. The council explained that the consultation letter or email includes the details of the officer to respond to, and therefore there are a limited number of people within the council who would hold information within the scope of the request. In addition to this it confirmed that such information is sent to a case officer's work email via a council supported software system, as such, no information will be stored on personal computers.
18. The council also explained that electronic responses are printed and placed on the paper planning file. The paper planning files are retained for three years, and are also scanned onto an electronic file. It advised that the planning decisions and documents submitted along with the applications are available on the council's public access system, and the scanned planning files are available to view on request, which is what happened in this case.
19. The council has confirmed its position that the requested information has been provided and the paper file has been viewed by the complainant, with consultation responses marked for ease of reference.
20. The Commissioner notes that there is some dispute regarding information predating March 2015, as to whether further information exists, and if so, whether it is in the scope of the request.
21. Following the lead of a number of information tribunal decisions, the Commission has applied the civil test of the balance of probabilities, and has determined that there is no additional information predating March 2015 which could fall within the scope of the request. In particular, she notes that the consultation commenced in July 2015, so there is little likelihood of additional consultation information predating that time. She also observes that the council has, albeit at internal review, conducted a thorough search for information in the scope of the request.
22. The Commissioner therefore finds that the council has supplied the information within the scope of the request, and so has complied with regulation 5(1).
23. However, by not providing the complainant with the information that it requested within 20 working days of receipt of the request the council breached regulation 5(2).

Regulation 14 – Refusal to disclose information

24. Under regulation 14(2) of the EIR, a public authority is required to issue a refusal notice no later than 20 working days after the date of receipt of the request. Under regulation 14(3), any refusal should specify any exceptions being relied on by the public authority.
25. In this case, the council's initial response on 7 September 2015 stated that the information would not be published until the planning decision was made, and also it could not be viewed in situ. It did not contain any of the particulars required by section 14, and therefore cannot be considered as a valid refusal notice. In particular it did not state which exception it relied on for refusing access.
26. The Commissioner therefore finds that the council failed to comply with regulation 14.

Regulation 9- Advice and assistance

27. Regulation 9 requires a public authority to provide advice and assistance to the applicant as far as it is reasonable to expect the authority to do so.
28. The complainant specifically complained to the Commissioner that it considered that the council had breach regulation 9 as the initial response of 7 September simply stated that the information could not be viewed on site, but without any explanation as to why.
29. The Commissioner recognises the complainant's frustration on this point, but considers that the council's failure to deal appropriately with the request and respond in compliance with the EIR is dealt with under its regulation 14 requirements to issue a refusal notice with details of the exceptions relied upon to withhold information when refusing a request.
30. The Commissioner therefore finds that the council has not breached regulation 9 in this case.

Right of appeal

31. 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@hmcts.gsi.gov.uk

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

32. 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.
33. 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
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