

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

### **Decision notice**

**Date:** 26 July 2022

**Public Authority:** Leicestershire County Council  
**Address:** County Hall  
Leicester Road  
Leicester LE3 8RA

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

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1. The complainant requested information from Leicestershire County Council ("LCC") about an email which LCC had sent to a local newspaper.
2. The Commissioner's decision is that the requests fell to be considered under the EIR. He is not persuaded that LCC's handling of request 1, as set out in this notice, complies with its obligations under that legislation.
3. The Commissioner requires LCC to take the following step to ensure compliance with the legislation.
  - In line with regulation 9(2) of the EIR, return to the complainant for further particulars to clarify request 1, in order to be able to carry out an objective reading of that request.
4. LCC must take this step 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.

#### **Background to the case**

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5. This case stems from a proposed land sale at a site known as Lake Terrace and concerns two local authorities: LCC and Melton Borough

Council ("MBC"). The Commissioner understands that land at the site was to be sold to developers, to allow access to a new housing development. Part of the relevant land was owned by LCC and part by MBC.

6. An article was published in the Melton Times on 15 January 2021, suggesting that MBC was negotiating a sale of the land; subsequently, a further article was published in February 2021 entitled "Councils in war of words over Melton land sales". This included a quotation from LCC and was critical of MBC.

## Requests and responses

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7. On 22 April 2021, the complainant wrote to LCC and requested information in the following terms (Request 1):

"Using the EIR, I am requesting information related to a LCC Cabinet meeting held 5 February 2021 at 11am and also an email dated 10 February 2021 sent to the Melton Times re the 'Lake Terrace Issue' at Melton Mowbray which was printed on 11 February.

- 1) [extracts from LCC Cabinet meeting of 5.2.21 provided] I have checked the Borough Council's public records and there is no such public record to suggest that the Borough Council had agreed a price for its land at £150,000 or circa £150,000... Please advise me which media contained the information which led LCC's Director of Corporate Resources to make the above assertions related to £150,000 being the price for the Borough Council's land.
  - 2) [On] 10th February 2021 a LCC spokesman emailed the Melton Times 're the Lake Terrace issue' at Melton Mowbray which was printed on 11th February [extracts provided]... Please provide the information and evidence which led LCC to make the above allegations to the Melton Times re the Housing Scheme at Lake Terrace, Melton Mowbray."
8. LCC responded on 28 April 2021. It explained that LCC's position had been reached following the consideration of an MBC cabinet report dated 20 January 2021, and a report from LCC's director of corporate resources presented to the cabinet meeting on 5 February 2021, as referred to by the complainant, which detailed why it considered the disposal to be at an undervalue. With regard to the Melton Times article, it explained that it had relied on its own knowledge that it had not been "advised of or consulted by the Borough Council in relation to the approval to dispose of the land".

9. On 6 May 2021 the complainant requested an internal review. She commented that the reports and article referred to in the response did not include "any mention whatsoever of MBC trying to sell LCC land, that MBC had been advised to do so, or that the MBC cabinet had agreed without questioning the sale".
10. LCC provided an internal review on 24 May 2021. It stated that, in its view, it had been reasonable to infer that "MBC negotiated the price of the ransom strip which was partly comprised of LCC land". It commented that it held further information relating to valuation, which was exempt under section 41 FOIA: information provided in confidence.
11. The complainant also made a new request in her communication of 6 May 2021 (Request 2):

"I particularly request the complete email which was sent to the Melton Times on 10<sup>th</sup> February and the name of the author of the email, which might or might not be, the person who emailed the information to the Melton Times on 10th February."
12. On 24 May 2021, LCC stated that the name of the author of the email was exempt because it was third party personal data.

### **Scope of the case**

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13. The complainant contacted the Commissioner on 22 June 2021 to complain about the way her requests for information had been handled.
14. During the investigation, the handling of Request 2 has been informally resolved. LCC has provided a redacted copy of the email of 10 February 2021 to the complainant and has agreed to disclose that the email was composed by four senior officers then in the employ of LCC.
15. The complainant is satisfied with this response.
16. With regard to Request 1, LCC advised the Commissioner, during the investigation, that it now considered it held no further information falling within the scope of the request.
17. However, it provided some redacted email correspondence, some with attachments, to the Commissioner for consideration.
18. The scope of the case is to consider LCC's handling of Request 1.

## **Reasons for decision**

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### **Environmental information**

19. Regulation 2(1)(c) of the EIR states that information on measures and activities affecting, or likely to affect, the elements and factors of the environment, is environmental information.
20. In this case, the Commissioner is satisfied that, because the proposed disposal of the land was for the purposes of redevelopment, information about the disposal, including any information which led to the comments in the email, is "environmental" and the request fell to be considered under the EIR.

### **Regulation 9(2) – requests expressed in too general a manner**

21. Regulation 9 of the EIR establishes the requirement for a public authority to provide advice and assistance to a requester.
22. Specifically, regulation 9(2)(a) provides that where a public authority decides that a requester has formulated a request in too general a manner, it shall ask them as soon as possible and in any event no later than 20 working days after the date of receipt of the request, to provide more particulars in relation to the request.
23. In this case, it is clear from LCC's correspondence with the Commissioner that it has not yet established an objective reading of the request, as explained below.
24. LCC explained to the Commissioner that it held no information falling within the scope of the request. However, it also stated that it held some information relating to the proposed sale of the relevant land. This included land registry documents (which the Commissioner notes can be readily obtained from the Land Registry) and correspondence, which appears to be both internal and with MBC officers.
25. LCC stated to the Commissioner that it considered the information described in the previous paragraph may fall outside the scope of the request. However, it also stated that it may fall within scope, and if so may be exempt, either under FOIA or under the EIR.
26. In order to be able to comply with regulation 5(1) of the EIR, which states that a public authority which holds environmental information shall make it available on request, it is imperative for the public authority to establish a single objective reading of the request, in order to identify what information has been requested.

27. In this case, LCC has evidently been unable to determine whether the correspondence (and associated attachments) which it holds, falls within the scope of the complainant's request for the "information and evidence" which led to allegations being made on 10 February 2021.
28. Although LCC informed the Commissioner that it considered it had "properly construed [the request] as a request for the disclosure of those documents, if any, which informed the views of the officer(s) who authorised the release of a public statement on behalf of the County Council" it has been unable, conclusively, to identify such documents.
29. LCC has provided the correspondence to the Commissioner for consideration. However, since the information has been provided only in redacted form, the Commissioner cannot, and in any event is not required to, determine for himself whether it falls within the scope of the request, following on from an objective reading.
30. In these circumstances, the Commissioner is satisfied that LCC should have returned to the complainant for further particulars, under regulation 9(2) of the EIR, to enable it to carry out an objective reading. This would have enabled an effective scoping of the request.
31. He therefore orders LCC to contact the complainant for further particulars, in order to establish an objective reading of request 1.

## Right of appeal

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

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

33. 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.
34. 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 .....**

**Sophie Turner**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**