

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 19 March 2024

Public Authority: North Northamptonshire Council
Address: Sheerness House
41 Meadow Road
Kettering
Northamptonshire
NN16 8TL

Decision (including any steps ordered)

1. The complainant has requested ecological surveys in respect of a planning application. North Northamptonshire Council (“the Council”) stated that the information was held but already publicly available for the purposes of regulation 6(1)(b) (information already publicly available) of the EIR.
2. The Commissioner’s decision is that the Council has not demonstrated that the information is already publicly available.
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 terms of the EIR. If the Council applies regulation 6(1)(b) again, it should specifically direct the complainant to those documents it considers relevant to the request.
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

5. On 25 July 2023, the complainant wrote to the Council and requested information in the following terms:

“I am writing to request copies of Ecological Surveys, including, but not limited to bat surveys, that include the lime trees known as The Walks, London Road, Wellingborough, between the Dog and Duck pub and the River Nene. And also the field boundary on the west side of the A509 between the Tesco roundabout and the River Nene. I have attached a plan with the areas of interest marked in red.”

6. The Council responded on 17 August 2023. It stated that information was held, but that it was already publicly available.
7. Following an internal review, the Council wrote to the complainant on 31 August 2023. It maintained that the requested information was publicly available.

Reasons for decision

Regulation 6(1)(b) – Information already publicly available

8. Regulation 6(1)(b) of the EIR states:

“(1) Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless-

(b) the information is already publicly available and easily accessible to the applicant in another form or format.”

9. In this case, the Council provided the URL to its planning application portal, along with the specific planning application references that should be entered.
10. The Council has advised the Commissioner that it considers information to be held that would fall within scope of the request. However, this information, being surveys/reports, does not exclusively relate to the small area that the requester has specified. Instead, they relate to a much larger area of land on which a substantial development is proposed.
11. The complainant has explained to the Commissioner that it is not clear to them which documents the Council considers to be relevant to the request.

12. The Commissioner has accessed the planning application portal and searched by the planning application references given by the Council.
13. Having done this, the Commissioner does not consider that it is clear which documents the Council is directing the complainant to. There is a significant volume of documents within the planning cases, and the Commissioner does not consider that it is obvious which documents are relevant.
14. Whilst the Commissioner accepts that all statutory documents will be publicly accessible as part of the planning application process, he reminds the Council that in cases such as this, it should be precise when directing a requester to the documents it considers relevant.
15. Consequently, the Commissioner is not satisfied that regulation 6(1)(b) is engaged.
16. The Commissioner therefore requires the Council to comply with the steps at paragraph three of this decision notice.

Right of appeal

17. 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

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

18. 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.
19. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Daniel Perry
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Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF