

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

Decision notice

Date: 27 February 2012

Public Authority: Rochdale Metropolitan Borough Council

Address: PO Box 15
Town Hall
Rochdale
OL16 1AB

Decision (including any steps ordered)

1. The complainant requested any information held by the council in relation to gates which had been erected on a lane near Alkington Hall in Middleton, Manchester.
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 22 May 2011 the complainant wrote to the Council and requested information in the following terms:

"Please can you supply all information you hold regarding the Gates at Alkrington Hall, Middleton, Manchester"

6. The council responded on 26 May 2011. It disclosed some information it held however it exempted other information on the grounds that it was exempt under sections 41 and section 42 of the Freedom of Information Act 2000 applied. These exemptions relate to information held in confidence and information which attracts legal professional privilege respectively.
7. On review the council confirmed its original decision, however it did provide some clarification of the information it had disclosed to the complainant.

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 complaints and legal advice relating to the erection of a gate on a lane in Manchester. There is some degree of uncertainty whether the gate blocks a right of way over the land.
11. The Commissioner considers that such information would fall within the definition of environmental information provided in Regulation 2 (c). It is information on an activity affecting the elements of the landscape provided in Regulation 2(a) and also information on measures designed to protect those elements.
12. 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

13. 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

14. 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.
15. 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