

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

**Date:** 1 December 2022

**Public Authority:** Kirby Muxloe Parish Council  
**Address:** Parish Council Office  
Station Road  
Kirby Muxloe  
Leicester  
LE9 2EN

**Decision (including any steps ordered)**

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1. The complainant requested information about a grant application in respect of a listed structure. The Council provided some information and withheld other information under section 43 of the FOIA. The Commissioner's decision is that the requested information is environmental information within the definition at regulation 2(1)(c) of the EIR. The request should, therefore, have been handled under the EIR rather than the FOIA. He also notes that the Council has failed to consider all of the information held relevant to the request for disclosure.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Reconsider the request and its scope under the provisions of the EIR and issue a fresh response to the complainant.
3. 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 pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

## **Request and response**

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4. On 1 November 2021 the complainant wrote to the Council and referred to an item to be discussed at a Council meeting on 5 November 2021 and requested information in the following terms:

"Additionally, I should be grateful for the following information referred to in 14.i. :-

1. Copies of the application documents and other communications submitted with the application for the grant, which should include the identity of the grant-awarding body,
  2. A copy of all documentation received offering the grant,
  3. A copy of the grant contract documentation".
5. The Council responded on 11 March 2022 and provided the information requested, subject to some information being withheld under section 43 of the FOIA.
6. On 13 March 2022, the complainant requested an internal review of the Council's handling of the request. As well as querying the information withheld under section 43, the complainant queried the absence of certain documentation referred to in the information disclosed, which had not been disclosed.
7. The Council provided the outcome of its internal review on 6 May 2022 and upheld its decision that section 43 applied to the information withheld. In this response the Council also confirmed that some supporting documents had not been provided because many of the documents in question were maps and photographs and as a resident of the village it was felt that the complainant would already have such knowledge. The Council also confirmed that "any such declaration is made by the Chairman of the Council, following Council's approval". However, the Council stated that it was unable to provide details of the individual who signed the grant on behalf of the War Memorials Trust. Finally, the Council also advised that the Grant Management Form, referred to in the letter from the War Memorials Trust dated 23 September 2021 "cannot be accessed".

## **Scope of the case**

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8. The complainant initially contacted the Commissioner on 10 January 2022 to complain about the delay in the Council responding to their request. The complainant contacted the Commissioner again following

receipt of the internal review response confirming that they remained dissatisfied with the way their request for information had been handled.

9. This decision notice covers whether the request for information has been correctly handled, including whether or not the information is environmental.

## **Reasons for decision**

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### **Regulation 2(1) – definition of environmental information**

10. Regulation 2(1) of the EIR provides the following definition of environmental information:

“...any information in written, visual, aural, electronic or any other material form 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;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(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...”

11. It is important to ensure that requests for information are handled under the correct access regime. This is particularly important when refusing to provide information, since the reasons why information can be withheld under FOIA (the exemptions) are different from the reasons why information can be withheld under the EIR (the exceptions). In addition, there are some procedural differences affecting how requests should be handled.

12. The Commissioner has produced guidance<sup>1</sup> to assist public authorities and applicants in identifying environmental information. The Commissioner's well-established view is that public authorities should adopt a broad interpretation of environmental information, in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact.
13. The information requested by the complainant in this case comprises information relating to a grant for repairs/restoration of memorial gates and pillars.
14. The Commissioner considers that the information is environmental information because repairs/refurbishment to a listed building is a measure/activity which is likely to affect the environment, under the definition in regulation 2(1)(c); it is an activity likely to affect the elements and factors referred to in 2(1)(a), i.e. the land and landscape, and the withheld information is "on" that measure.
15. In light of the above, the Commissioner has determined that the request should have been considered under the EIR as opposed to the FOIA.
16. The Commissioner orders the Council to make a fresh response to the complainant's request of 1 November 2021 under the provisions of the EIR. In so doing the Council should fully reconsider the request ensuring it correctly identifies **all** information falling within its scope. The Council should then either disclose the remaining information held relevant to the request, or issue a valid refusal notice which complies with regulation 14 of the EIR, confirming what exception(s) it considers applicable.

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<sup>1</sup> <https://ico.org.uk/for-organisations/guide-to-the-environmental-information-regulations/>

## Right of appeal

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

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

**Signed .....**

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