

# **FREEDOM OF INFORMATION ACT 2000**

## **(the “FOIA”)**

### **REVIEW DECISION**

DATE: 26 November 2013

Reference: 1596429

#### **1 Summary**

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1.1 A request for information under the FOIA was made on 1 October 2013 (the “Request”). The Council responded to the Request on 4 November 2013. The request for a review (the “Review”) of the Council’s handling of the Request was received on 4 November 2013.

1.2 The Review was held on 26 November 2013.

#### **2. Details of the Review**

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2.1 The request for the Review was made on 4 November 2013.

2.2. The Review was set up in accordance with the Council’s FOIA procedure.

2.3 The Council officers undertaking the Review were:

- Helen Makin, Solicitor, Legal and Democratic Services and
  - Fiona Edwards, Development Planning Manager, the nominated Tier Four Senior Manager.
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#### **3 The Original Request for Information**

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3.1 The original request for information asked for traffic regulation orders for Bridge Street/Watergate Street for the pedestrian zone and the restricted waiting zone, to include plans and schedules and updates and revocations.

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#### **4. The Reasons for the request for the Review**

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- 4.1 The reason for the request for the Review made on 4 November 2013 as the Council had failed to supply the information requested and had failed to respond within the 20 working day statutory period.

#### **5. Documents produced to the Review**

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- 5.1 The following documents were read prior to the date of the Review and discussed at the Review:
- The Request;
  - Council response to the Request;
  - Request for the Review;
  - Internal e mails containing details of the response to the request and request for the correct and complete documents and
  - Documents subsequently sent to the requester.

#### **6. Chronology**

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- 6.1 The Request was made on 1 October 2013. The twenty working day deadline expired on 29 October 2013.
- 6.2 The Council has responded to the Request on 4 November 2013.
- 6.3 The request for the Review was received on 4 November 2013.
- 6.4 The Review was held on 26 November 2013.
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#### **7. Procedural Matters**

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- 7.1 The original request was made under the FOIA. The Request should also have been made under the Environmental Information Regulations. The Council should have treated the Request as a request under the Environmental Information Regulations 2004 (the "EIR") and issued a notice under the FOIA stating that the Request was partly exempt under section 39 (1) FOIA. The FOIA provides that environmental

information is an absolute exemption and therefore requests for environmental information must be dealt with under EIR. The EIR defines environmental information as being any information in written, visual, aural, electronic or any material form on-

*2(1) (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;*

*2(1)(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);*

*2(1)( 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;*

*2(1) (d) reports on the implementation of environmental legislation;*

*2(1) (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c);*

*2(1) (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements by any, matters referred to in (b) and (c).*

- 7.2 The Request relates traffic regulation orders for the pedestrian zone and restricted waiting zone in Bridge Street/ Watergate Street Chester. The Request therefore falls to be considered within section 2 (1) (a) and (c) of the EIR.
- 7.3 The Council is required to make available environmental information that it holds on request (Regulation 5(1)) and to do so as soon as possible and no later than 20 working days after date of the request. Regulation 12 (2) states that the Council shall apply a presumption in favour of disclosure.
- 7.4 The Council is able to respond to a request later than the 20 working days after the date of the request by extending the date for reply to 40 working days if it reasonably

believes that the complexity and volume of information requested means that it is impractical either to comply with the request within the earlier period or to make a decision to do so. If this is the case, the Council must inform the applicant as soon as possible and no later than 20 working days after the date of receipt of the request.

- 7.5 The Council is obliged by Regulation 11 of the EIR to offer an internal review of its handling of the request for information. The Council has 40 working days after the date of receipt of the request for review to consider the representations received from the applicant.
- 7.6 The Council failed to deal with the Request under EIR and instead treated it as a request under FOIA.
- 7.7 The Council failed to respond to the Request within 20 working days.
- 7.8 The Council failed to provide all of the relevant documents and provided an order for City Road which did not have any relevance to the Request.
- 7.9 There were no reasons to take additional time to answer the Request because the Request was neither complex nor voluminous.

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## **8. Documents for Disclosure**

- 8.1 The Correct documents relevant to the Request were obtained by Helen Makin prior to the date of the Review and e mailed to Mr Blake on 18 November 2013.
- 8.2 There are no documents outstanding.

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## **9. Conclusions**

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- 9.1 The Council failed to provide the information requested within the 20 working day time period stipulated in Regulation 5 (2) EIR.

- 9.2 The Council therefore breached Regulation 5 (1) and (2) of the EIR as the Council had a duty to confirm or deny that the information existed and to provide the information not later than the twentieth working day following the date of receipt of the request, and failed to do so.
- 9.3 The Council should have issued a notice under section 17 (1) FOIA stating that it was refusing to deal with the Request under FOIA because an exemption applied (the information requested being environmental information) but it failed to identify that the Request was partly a request under the EIR and therefore failed to issue the correct notice.
- 9.4 The Council failed to provide the information requested and did not adequately check the information before it was sent out, and had the information been checked, it would have been apparent that the information contained irrelevant information and was incomplete.
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## **10. Steps Required**

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- 10.1 The information requested has been provided to Mr Blake on 18 November 2013.
- 10.2 The Council is reminded that:
- 10.2.1 it must reply to a request under the EIR in accordance with the statutory time requirement, being twenty working days, starting on the day following receipt of the request, and that it must confirm or deny the existence of the information and if no exemption is claimed, provide the information requested and
- 10.2.3 additional time for considering a request is only permitted if the Council reasonably believes that the complexity and volume of the information requested means that it is impractical either to comply with the request within the 20 working day period or make a decision to do so, and that a notification that extra time is required must be sent to the requester within the 20 working day period.
- 10.3 The Council is required to ensure that it responds to a request under the correct statutory regime.
- 10.4 The failures in this case have already been brought to the attention of Michelle Edwards, Team Leader, Solutions Team.
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### **Right of Appeal**

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If you are dissatisfied with the outcome of the Review or you remain dissatisfied with the way the Council conducted the original request or the Review, you may complain to the Information Commissioner at:

The Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Tel: 0856 30 60 60 or 01625 54 57 45

Website: [www.ico.gov.uk](http://www.ico.gov.uk)