

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

Date: 13 March 2020

Public Authority: Mid Sussex District Council
Address: Oaklands Road
Haywards Heath
RH16 1SS

Decision (including any steps ordered)

1. The complainant has requested information relating to specific planning applications. Mid Sussex District Council disclosed some information and withheld other information under the exceptions for internal communications (regulation 12(4)(e)) and the course of justice (regulation 12(5)(b)). During the Commissioner's investigation the public authority dropped its reliance on exceptions and disclosed the previously withheld information to the complainant. The complainant asked the Commissioner to determine whether all the relevant information had been disclosed.
2. The Commissioner's decision is that Mid Sussex District Council has disclosed all the relevant information it holds and complied with regulation 5(1) but that in doing so outside the time limit it breached regulation 5(2).
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 18 April 2019 the complainant wrote to Mid Sussex District Council (the "council") and requested information in the following terms:

"We request copies of all documents held by Mr Andy Watt on his file relating to all planning applications made by our client to include (inter alia):

A schedule of all documents held by MSDC;

All internal and external emails and correspondence from and to Mr Watt including those that are not on the planning portal and to include those between statutory consultees, members of public, highways, landscape architects, arborists and senior planning officers;

All internal letters from and to Mr Watt;

All internal memos and attendance notes from and to Mr Watt;

All text messages, Whatsapp messages or other electronic or instance messages from and to Mr Watt;

All faxes from and to Mr Watt; and

All reports to and from experts."

5. The council responded on 13 May 2019 and asked the complainant to pay a fee which the complainant subsequently paid on 23 May 2019. On 5 June 2019 the council wrote to the complainant and disclosed some information. It also confirmed that some information was not held and withheld other information under the exception for internal communications – regulation 12(4)(e).
6. Following an internal review the council wrote to the complainant on 24 July 2019. It disclosed additional information and confirmed that, in addition to regulation 12(4)(e), was also relying on the exception for the course of justice (regulation 12(5)(b)) to withhold information.

Scope of the case

7. During the Commissioner's investigation the council dropped its reliance on exceptions and disclosed the previously withheld information to the complainant.

8. On 6 February 2020 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
9. The Commissioner confirmed with the complainant that her investigation would consider whether the council had disclosed all the relevant information it holds that falls within the scope of the request.

Reasons for decision

Regulation 5 – duty to provide environmental information

10. The complainant has stated that they dispute the council's position that all relevant held information has been disclosed.
11. Regulation 5(1) of the EIR states that:
"Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request."
12. Regulation 5(2) states:
"Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request."
13. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. Finally, she will consider any reason why it is inherently likely or unlikely that information is not held.
14. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities. In order to make this judgement the Commissioner approached the council with standard questions she asks in such scenarios. The questions and summaries of the council's responses (in italics) are set out below.

15. What searches have been carried out to check no information was held within the scope of the request and why would these searches have been likely to retrieve any relevant information?

The council confirmed that all planning information is held under relevant reference numbers and staff record the application on the Uniform casework system and store data in the records management system under the relevant number. The council explained that no data is held anywhere else other than in the email system. It confirmed that the officers who dealt with the planning applications searched the relevant planning applications that were listed in the original request and searched their emails for anything not stored on the records management system. The council clarified that the majority of this data is published on the Online Planning Register and it did not include anything that was already publicly available in the response we sent out.

16. Please describe thoroughly any searches of relevant paper/electronic records and include details of any staff consultations.

The council confirmed that all data is held electronically and searches were carried out using the relevant reference numbers.

17. If searches included electronic data, which search terms were used and please explain whether the search included information held locally on personal computers used by key officials (including laptop computers) and on networked resources and emails.

The council confirmed that search terms were the application numbers. It explained that staff can only store data in the records management system or on networked drives, both of which were searched: No data is held locally on personal computers.

18. If the information were held would it be held as manual or electronic records?

The council confirmed that the information would be held electronically.

19. Was any recorded information ever held relevant to the scope of the complainant's request but deleted/destroyed?

The council confirmed that no relevant information had been deleted or destroyed.

20. What does the council's formal records management policy say about the retention and deletion of records of this type? If there is no relevant policy, can the council describe the way in which it has handled comparable records of a similar age?

The council provided the Commissioner with relevant extracts from its retention schedule. This confirms that information relating to Planning applications and documents should be retained in perpetuity, information relating to Pre-application planning letters and queries should be kept for 5 years and information relating to Invalid planning applications should be kept for 2 years.

21. Is there a business purpose for which the requested information should be held? If so, what is this purpose?

The council confirmed that the relevant business purpose is the processing of planning applications.

22. The complainant has stated that they dispute the council's position that all relevant information has been disclosed. They confirmed that they were unable to provide direct evidence that contradicts the council's position, however, they confirmed that they had submitted a series of planning applications in relation to the land at Turners Hill and have argued that this number of planning applications should have generated a huge number of internal and external communications. The complainant confirmed that they considered it inconceivable that the council had fully disclosed all of the relevant material held.
23. The Commissioner notes the complainant's concerns and understands why they might reasonably consider that further information might be held by the council. However, the Commissioner has not been provided with any direct evidence to contradict the council's position. She also notes the council's explanation that "*....all planning information is held under relevant reference numbers and staff record the application on the Uniform casework system and store data in the records management system under the relevant number.*" and that "*...no data is held locally on personal computers.*"
24. In view of the council's explanation of its method of storing information and its confirmation of the searches conducted for information falling within the scope of the request, the Commissioner is satisfied that, on the balance of probabilities, it has located, retrieved and disclosed all the relevant information it holds. The Commissioner, therefore, finds that the council complied with regulation 5(1).
25. However, in disclosing the information outside the 20 working day time limit the council breached regulation 5(2).

Right of appeal

26. 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: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

27. 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.
28. 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