

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

Date: 6 September 2018

Public Authority: Burghill Parish Council
Address: Clerk to Burghill Parish Council
27 Willow House
Burghill
Hereford
HR4 7RE

Decision (including any steps ordered)

1. The complainant has requested information relating to the creation of the council's neighbourhood district plan. The council provided some information and directed the complainant to where other information is available from its website but said that no further information is held. It also withheld some information under Regulation 12(5)(f) as it was provided in confidence.
2. The Commissioner's decision is that the council does not hold any further information falling within the scope of the request. She has also decided that the council was correct to withhold some information under Regulation 12(5)(f).
3. She has also decided that the council did not comply with the requirements of Regulation 5(2) in that it did not provide some information within 20 working days.
4. The Commissioner does not require the council to take any steps.

Request and response

5. On 10 July 2017, the complainant wrote to the council and requested information in the following terms:

Request EIR 1 *"All correspondence between the Burghill NDP Steering Group and Kirkwells Planning Consultants in relation to the Burghill NDP since 2012 to the date of this email."*

Request EIR 2 *"All correspondence between the Burghill Parish Council and Kirkwells Planning Consultants in relation to the Burghill NDP since 2013 to the date of this email."*

Request EIR 3 *"All correspondence between the Burghill Parish Council and the Burghill NDP Steering Group since 2012 to the date of this email."*

Request EIR 4 *"All correspondence circulated between the Burghill NDP Steering Group members (including members that have resigned) in relation to the Burghill NDP since 2012 to the date of this email."*

Request EIR 5 *"All correspondence between the Burghill NDP Steering Group and Herefordshire Council in relation to the Burghill NDP since 2012 to the date of this email."*

Request EIR 6 *"All correspondence between the Burghill Parish Council and Herefordshire Council in relation to the Burghill NDP since 2012 to the date of this email."*

Request EIR 7 *"All declarations of interest made by both Burghill Parish Council members and the Burghill NDP Steering Group members which relate to sites submitted to the Burghill NDP."*

Request EIR 8 *"The responses of the National Grid (Gas & elec) and Western Power (elec) in regard to the Burghill NDP and confirmation of how they were consulted."*

Request EIR 9 *"Will the BPC kindly provide the audited log which records the numbers of representations received from (i) site owners or their agents and (ii) members of the public:*

(a) for representations received at the Regulation 14 stage?

(b) for representations received on the Updated Sites Assessment Report?

and will it please also provide the audited log which records the sites submitted to the NDP at the time of the Questionnaires returns in 2014?

and will the BPC please confirm that all site submission questionnaires or representations at each of those stages were handled and recorded firstly by the Parish Clerk as the interface between the public and the PC?"

Request EIR 10 "I would be grateful if you could provide me with copies of: All comments/objections received to the Kirkwells' Updated Site Assessment Report."

Request FOI 1 "All Notices of Registrable Interests for the Burghill NDP Steering Group."

Request FOI 2 "The Notices of Registrable Interests for [name redacted] and [name redacted] are totally blank apart from their names; and the one for [name redacted] only declares land at Towtree Lane. Does this mean that they live outside the Parish?"

6. The council, in the form of the clerk to the council, responded on 3 August 2017. She said that

1. *"Unfortunately I do not hold any of this information."*
2. *"I have not inherited the email files of the previous Clerk, but have attached the correspondence I still have."*

In the review the council stated "I have no further information than what I sent you previously".

3. *"I have not inherited the email files of the previous Clerk, but have attached the correspondence I still have. All reports from the Steering Group are in the Parish Council minutes which are available on the website."*

In the review the council stated "All reports received from the Steering Group on the NDP are in the Parish Council minutes under the Neighbourhood Plan update, which are available on the Burghill Parish Council's website under Minutes."

4. *"Unfortunately, I do not have this information."*
5. *"This information can be obtained from Herefordshire Council, please see all I have."*
6. *"This information can be obtained from Herefordshire Council, please see all I have."*

7. *"This information is contained in the Parish Council minutes, which can be found on the Parish Council's website. The Steering Group was a working group so there are no declarations of interests."*

In the review the council stated: "As I previously stated these can be found in the Parish Council minutes on the Burghill Parish Council's website under minutes. All Parish Councillors complete the Declarations of Interest book before each meeting, and I transfer this information into the minutes. The Steering Group was a working group and I did not need to do this."

8. I do not have these responses, they can be obtained from National Grid (Gas & elec) and Western Power (elec).

In the review it added: "As previously stated I do not have these, but they can be found in the Consultation Statement June 2016 on the Burghill Parish Council's website under NDP." The complainant however disputes that the requested information is available within this statement and has provided a link to the councils copy to demonstrate that that is the case.

9. *"I am unable to confirm that all site submission questionnaires or representations at each of those stages were handled and recorded firstly by the Parish Clerk as the interface between the public and the PC as I was not the Clerk at the time."*

In the review the council added that "As previously stated I do not hold the audited logs they are now held by Kirkwells and shown in the NDP. The Questionnaire Results 2014, should show all the above answers for you and can be found on the Burghill Parish Council's website under NDP."

10. *"These will be in the final report from Kirkwells.*

Please note I am unable to give out correspondence I recently received from members of the public to other members of the public. These were sent to me in confidence with the understanding they would be sent to Kirkwells, and as stated will be in the report from Kirkwells".

In the review the council stated "This information is available on the Burghill Parish Council's website under NDP."

- FOI 1. *"I do not have these."*

FOI 2. *"Notices of Registrable Interests are the responsibility of the individual Parish Councillor and these can be viewed on the Herefordshire Council's website."* The complainant however argues that the council's response does not answer the question he had asked.

7. Following an internal review the council wrote to the complainant on 8 August 2017. It maintained its position.

Scope of the case

8. The complainant contacted the Commissioner 17 August 2018 to complain about the way his request for information had been handled. He argues that he is aware that members of the steering committee have previously copied the council into correspondence, and therefore this should be held by it.
9. He also argues that although the current clerk may not have information on her own computer (as she is relatively new in the role), as the current clerk to the council she should retrieve information from other council members, members of the steering group and from the former clerk as this is council information. He argues that if any of the information held by these parties falls within the scope of his requests then this should be retrieved and considered for disclosure to him.
10. The Commissioner considers that the complaint is therefore that the council is not correct to say that it does not hold any further information falling within the scope of the complainant's request.
11. The complaint is also that the council has failed to respond properly to some parts of the request.

Reasons for decision

Has the council responded to all of the requests appropriately?

12. The complainant raised issues with the council's response. He argues that the council has failed to properly respond to some parts of his request and that other parts were only partially responded to, or the response did not address the specific request he had made. The Commissioner has therefore considered the complainant's points in this respect.

EIR 9

13. As regards EIR 9 the council responded by indicating that the audited logs were not held by the council but by its agent, Kirkwells. The complainant however argues that as Kirkwells is acting on behalf of the council the council was under a duty to recover copies of the information from it and consider whether this information should be disclosed in response to the request.
14. The Commissioner therefore raised this as an issue with the council. The council said that *"Kirkwells did not collate the information from the questionnaires it was done by Gloucester Rural Community Council who were presented with all the questionnaire returns, they then collated the responses and analysed them into a single document entitled "Questionnaire Replies". This became a published document the contents of which were used by Kirkwells to prepare the NDP. Excerpts from the Questionnaire Replies were also published in the NDP in terms of percentages, pie charts, bar charts and tables. All the background information on questionnaire returns from parishioners was returned to the clerk."*
15. The Commissioner notes the discrepancy with these responses. It appears that the council did not properly formulate its response to the complainant nor clarify to him what information it held at the time that the request was received.
16. The Commissioner therefore asked the council in a telephone call dated 16 August 2018 whether the council could clarify whether it held the audited logs. The council confirmed that they did not.

FOI 1/EIR 7

17. The complainant also raised questions as regards the council response to FOI 1. The council initially said that members of the steering committee were not required to complete declarations of interest. The complainant however argued that he had been informed that declarations of interest were completed by members of the steering committee, and these were passed to the clerk of the council.
18. The Commissioner therefore specifically asked the council whether declaration forms were completed by members of the group and whether they had been retained by the council. The council responded saying that the complainant was correct in stating that all members of the steering committee had completed declaration forms and that these had been provided back to the clerk. However the council had subsequently received advice from HALC, (Herefordshire Association of Local Councils) that as the Steering Group was not a decision making body, but a discussion group, its members did not have to make

declarations of interest. It said therefore that the forms had not been retained.

19. Again there is a discrepancy between these two responses which has led the complainant to distrust the council's responses to his requests.

FOI 2

20. As regards FOI 2, the complainant argues that the council did not answer the specific question he had asked regarding whether specific councillors live within the parish or not. Whilst this is a question, rather than a request for recorded information, any recorded information held by the council which could respond to the request should have been considered for disclosure. This would include the addresses of the named councillors if this information was held by the council in recorded form.
21. The council initially responded by stating that details the identified parish councillors are published on their Register of Interests on the Herefordshire Website. Having looked at this the Commissioner notes that only two parish councillors publish their addresses on their declaration of interests. The third does not.
22. The actual addresses of the councillors is likely to be exempt from disclosure under Regulation 13(1) as it is their personal data. Additionally the request was not for the specific addresses of the councillors but confirmation that they live within the parish.
23. Following advice from the Commissioner the council sent a response to the complainant on 16 August 2018 confirming that all of the named councillors live within the area required to be a councillor on the council. The Commissioner understands that the requirements is that they live within 3 miles of the parish.
24. The Commissioner has therefore decided that the council has fully responded to this part of the complainant's request, albeit that its response as regards one councillor falls outside of the period for responding, set by Regulation 5(2), of 20 working days.

Regulation 12(5)(f)

25. As regards EIR-10 the council argued that questionnaires which completed by residents were provided to it in confidence. It did not however provide further arguments to the Commissioner as to why it considers this to be the case. As the Regulator of the Environmental Information Regulations 2004 and of The Data Protection Act 1998, and given the councils lack of experience in dealing with such matters, the

Commissioner has used her discretion to consider the council's position further. This is on the basis that the information identifies members of the public and a disclosure of this information might put the council in a position where it is failing to comply with the requirements of the DPA 1998.

26. The Commissioner notes that some of the comments which residents provided have been published as part of the NDP, but the remaining information has not. This includes the identities of those expressing the views but may also include other information. In this regard the exception in Regulation 12(5)(f) provides that information will be exempt if its disclosure would adversely affect:

"(f) the interests of the person who provided the information where that person –

(i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;

(ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and

(iii) has not consented to its disclosure; or..."

27. The exception will protect confidentiality owed to a third party by a public authority where its disclosure would adversely affect the interests of the person who provided the information.
28. The information was provided to the council voluntarily by members of the community who wished to express their views on the formulation of the NDP. The council argues that the information was provided to it in confidence, but that the individuals were informed that some of the views expressed would be disclosed in anonymised form as part of the NDP documentation.
29. The individuals provided these views voluntarily and therefore the first part of the test, (i), has been met.
30. In considering part (ii) of the test, the council argues that the information was provided to it in confidence and therefore it was supplied in circumstances that the council is not entitled to disclose it. The individuals who submitted forms were told that some of their comments may be published as part of the NDP however.

31. In common law, following the case of *Coco v Clark [1969] RPC 41*, when determining if disclosure would constitute a breach of confidence, the Commissioner considers that an authority will usually need to consider;
- whether the information has the quality of confidence,
 - whether it was imparted in circumstances importing an obligation of confidence, and
 - whether disclosure would be an unauthorised use of the information to the detriment of the confider.
32. The Commissioner considers that confidence can be explicit or implied, and may depend on the nature of the information itself, the relationship between the parties, and any previous or standard practice regarding the status of information.
33. A blank copy of the questionnaire is available on the council's website at <http://burghillparishcouncil.org/wp-content/uploads/2016/10/Burghill-NDP-Questionnaire.pdf>. The questionnaire contains a clear confidentiality promise, and also refers to the anonymity of those submitting questionnaires to the council. It also refers to the data protection rights of those submitting a questionnaire dated March 2014. Amongst other things, the clause provides that:
- "Any information you provide will be treated as strictly confidential and will only be used for the purposes of developing the Neighbourhood Development Plan. The information you provide will not be shared with any other party, but please note that any comments you provide may appear in anonymised form in the published results."*
34. Therefore confidence is explicitly stated within the document completed by individuals providing the information.
35. The Commissioner has therefore decided that the information has the necessary obligation of confidence as all the questionnaires were submitted via a form notifying those completing it that the information would be held as such, other than anonymised comments.
36. She has also decided that the information has the necessary quality of confidence. The withheld information is not trivial and is not otherwise in the public domain. It will contain identifying information in the name and address of the individuals, but the comments themselves may also contain information which could potentially lead some of the individuals to be identified.

37. Given that the information provides the views of those completing the questionnaire, a disclosure of the information would be detrimental to the privacy of the individuals concerned as it would identify their own individual views with the published comments.
38. The Commissioner has also considered whether there would be a public interest defence to the disclosure of the information.
39. A disclosure of the questionnaires is in the public interest as it would shed light on the views of individuals which fed into the development of the NDP. However as anonymised views were published this public interest is lessened.
40. Disclosure of this information would however allow interested parties to scrutinise the contents of the final report which was published against the actual contents of the questionnaires and ensure that representations were accurately portrayed and that excerpts which were published were not taken from otherwise contrary opinions which were submitted. It allows oversight into the probity of this section of the final report. The complainant argues that at the time of the EIR request it was discovered that about 10 responses from parishioners were missing from that Site Assessment Report. The missing responses were subsequently included in a revised report which was re-published, (although there was no admission that some parishioners' comments had initially been excluded, nor is it known if the missing responses had actually been taken into account in the conclusions).
41. On the counter side, a disclosure of the questionnaires undermines the confidentiality of the documents which the public had an expectation of when completing the form. The Commissioner considers that the public's understanding of the confidential nature of the views which they were providing is a significant argument in respect of the application of the exception to this information.
42. The potential is that questionnaires such as this would not be completed by individuals in the future if they believed that their identity could be linked to the opinions they provided, particularly over a potentially contentious issue such as identification of sites for future development within a small area where people may know each other personally.
43. A failure to provide confidentiality over the issue would potentially cause a chilling effect on public participation in the development of NDP's. Areas for new housing are often controversial, and some individuals may be dissuaded from providing controversial views or views contrary to perceived public opinion if they are aware that their identity would be disclosed along with their comments. This is particularly the case in areas such as small towns or villages where lower populations within an

area mean that people know each other and know where each other lives. It is not in the public interest for people to feel excluded from providing their views, and it undermines one of the central reasons behind the introduction of the Localism Act, that of decisions being taken on future housing requirements at a local level.

44. Having considered this further the Commissioner is satisfied that the public interest would not provide a defence to an unauthorised disclosure of the information. The Commissioner has therefore decided that the council was correct to state that this information was provided to it in confidence, and therefore part (ii) of the test outlined above has been met.
45. For the purposes of part (iii) of the test, none of the individuals have been asked to consent to the disclosure of the information, however the Commissioner considers that the council is not under an obligation to contact each and every person who submitted to seek this given the clear statement of confidentiality provided in the form they completed.
46. The Commissioner also recognises that a disclosure of the questionnaires without anonymising the contents would also be likely to engage Regulation 13(1) (personal data), however given the application of Regulation 12(5)(f) she has not needed to explore this further within this decision notice.

Does the council hold any further information?

Regulation 5(1)

47. Regulation 5(1) of the Act 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."

48. The Commissioner has considered whether council has complied with Regulation 5(1) and whether it was correct to say that no further information is held. Regulation 12(4)(a) provides the exception to the obligation to disclose information where no information is held.
49. During the course of the Commissioner's investigation, on 6 April 2018, the council was asked the following questions to determine whether further information is held relevant to the scope of the complainant's request:

- *"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?"*
- *Please describe thoroughly any searches of relevant paper/electronic records and include details of any staff consultations.*
- *I understand that the council argues that the previous clerk has not forwarded copies of her email files to the new clerk."*

If council information is still held by the previous clerk this is likely to be information which is held on the council's behalf for the purposes of the FOI and the EIR. The council therefore needs to include this information within its searches if this is possible, in order to respond to the request.

Please can I therefore ask you to confirm if the council has asked the previous clerk to provide it with the information which she or he holds on behalf of the council.

- *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.*
- *If no or inadequate searches were done at the time, please rectify this now and let me know what you have done*
- *If the information were held would it be held as manual or electronic records?*
- *Was any recorded information ever held relevant to the scope of the complainant's request but deleted/destroyed?*
- *If recorded information was held but is no longer held, when did the council cease to retain this information?*
- *Does the council have a record of the document's destruction?*
- *What does the council 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?*
- *If the information is electronic data which has been deleted, might copies have been made and held in other locations?*

- *Is there a business purpose for which the requested information should be held? If so what is this purpose?*
 - *Are there any statutory requirements upon the council to retain the requested information?*
50. The council responded to the Commissioner on 3 May 2018. It said that any documents or changes *of relevance*, concerning developing issues and land use were retained and were reported to the Burghill Parish Council (BPC), and remain to the present time as minuted items in the public domain.
51. It said that searches were carried out of the clerk's laptop and information was requested of elected members. The information which was found was provided to the complainant in response to his request for information.
52. It said that *"The PC is now aware of the importance of recording PC business information exchanges between elected members. However, members feel that it is an imposition to be asked to disclose information which is held on private computers. Non-elected Working group members are of a similar view as there might be personal exchanges which are not for wider disclosure."* However it clarified that no new information was found from the request to members.
53. The council clarified that all emails would be held electronically, but there would be some manual records, and the former chairman of the steering group retained a hard copy of the original 'call for sites' information at the time of the questionnaire. They also retained a copy of all of the documents displayed during the option days which the council took part in.
54. The Commissioner asked the council to confirm whether the former clerk had been asked whether she holds further information falling within the scope the request. The new clerk took up her position in the council in October 2016, therefore some of the timeline which falls within the scope of the complainant's requests falls within the period of time in which the former clerk (or other clerks) were in position at the council.
55. The council confirmed that the former clerk left her job with the council in October 2016 and this request was not made until July 2017. It said that the former clerk had not realised that she would need to retain information herself as the council considers that all relevant information is published on either Herefordshire Council's website or the Parish Council's web-site. It confirmed therefore that the former clerk had not retained any relevant information.

56. The Commissioner questioned the council's response as regards its reply that elected members and non-elected working group members feeling it an imposition to be asked to disclose information which might also contain personal exchanges which are not for personal disclosure. She highlighted that if Councillors deliberately conceal information which would otherwise need to be disclosed in response to a request under the Act or the Regulations then this could amount to a criminal offence by the individuals involved. Councillors are elected members of a public authority and actions and correspondence they have on behalf of the council are therefore information caught within the scope of the FOI Act.
57. The council clarified that there had been no instructions to elected members to retain email exchanges generated on private computers or servers indefinitely. It said that *"There is no code of practice in place for the retention of information on private computers or servers used by elected members or non-elected working group members"*.
58. It is aware that some items were both deleted and destroyed:
- "These concerned some of the submitted comments on the NDP at its Regulation 14 publication stage managed by Burghill Parish Council. Some of the submitted comments were considered allegedly to be defamatory and libellous and unrelated to land use planning. The comments were directed at Parish Council members, The Clerk, Steering Group members, members of the public and owners of submitted sites. On the advice of HALC and Kirkwells these comments were deleted and destroyed. No record now exists as it was considered inadvisable to keep copies of what had been said in the submitted comments. For these reasons the tabulated and published comments for the Regulation 14 process are expediently incomplete, but still contain submitted comments that are relevant to land use planning."*
59. The council said that outdated event information was disposed of if no longer required for research purposes, but the results of any deliberations were reported to the council.
60. It said that there is no record held of the destruction of any documents and the council is not aware therefore what information was held and has since been destroyed. However it is aware that the defamatory statements were destroyed previously as it argues that this was on the basis of advice which the council received regarding such statements.
61. The council clarified that due to the lack of guidance and procedures as regards recording information which it previously had in place its response had tried to convey that it believed that information might have been deleted or destroyed by members when it was no longer of use to them. Under the previous system of recording parish information,

council members would just delete information once its use had finished rather than passing copies to the council for it to hold as records. No guidance had been issued to them previously which had highlighted the potential need for copies of this to be retained by the council. The clerk to the council had therefore never received a record of these sorts of documents as they would only have been retained on the private computers of individuals prior to being deleted.

62. The clerk to the council confirmed however that she had asked the relevant councillors and steering group members whether they hold relevant information and in response to her inquiries they had said they do not.
63. The council considered that a lack of adequate procedures previously explains why they had not found further information.
64. The clerk to the council said that she was not in a position to search private computers in individuals homes herself and so was reliant upon these individuals to carry out adequate searches and report back any information which they had found, and this is what she had done.
65. The council said that it fully recognised that it had been wrong in failing to record information appropriately previously and the clerk was therefore in the process of updating the council's records management procedures to try to capture this information so it is not lost once members deleted it from their own private computers. This included information on the clerk's computer if she were to leave the parish council. The council considers implementing these new procedures will resolve the FOI issues it has faced in responding to this request in the future.

Conclusions

66. The Commissioner is mindful of the Tribunal's decision in *Bromley v the Information Commissioner and the Environment Agency (EA/2006/0072)* in which it was stated that "there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records". It clarified in that case that the test to be applied as to whether or not information is held was not certainty but the balance of probabilities. This is the test the Commissioner will apply in this case.
67. In discussing the application of the balance of probabilities test, the Tribunal stated that, "*We think that its application requires us to consider a number of factors including the quality of the public authority's initial analysis of the request, the scope of the search that it decided to make on the basis of that analysis and the rigour and*

efficiency with which the search was then conducted. Other matters may affect our assessment at each stage, including for example, the discovery of materials elsewhere whose existence or content point to the existence of further information within the public authority which had not been brought to light. Our task is to decide, on the basis of our review of all of these factors, whether the public authority is likely to be holding relevant information beyond that which has already been disclosed."

68. The Commissioner is also mindful of the case of *Ames v the Information Commissioner and the Cabinet Office (EA/2007/0110)*. In this case Mr Ames had requested information relating to the September 2002 "Iraq's Weapons of Mass Destruction" dossier. The Tribunal stated that the Iraq dossier was "...on any view an extremely important document and we would have expected, or hoped for, some audit trail revealing who had drafted what..." However, the Tribunal stated that the evidence of the Cabinet Office was such that it could nonetheless conclude that it did not "...think that it is so inherently unlikely that there is no such audit trail that we would be forced to conclude that there is one...". Therefore the Commissioner is mindful that even where a person might reasonably expect that information should be held, this does not necessitate that information is held.
69. In coming to a conclusion on this, the Commissioner has considered what information she would expect the council to hold and whether there is any evidence that the information was ever held.
70. The Commissioner has therefore taken the above factors into account in determining whether or not the requested information is held on the balance of probabilities.
71. The council appears to have been lax in its approach to records management previously, and there are still ongoing issues which are currently being addressed which leave it in a position where it is unable to state what records it should hold, and what records have been destroyed previously.
72. The Commissioner also notes that the council has provided a number of conflicting responses to both her and to the requestor when asked questions about what information it holds. For instance it initially said that no declarations of interest forms were completed by work group members, but subsequently confirmed to the Commissioner that they had been, but that they had not been retained. The council also said that audit logs were held by Kirkwells, but then confirmed that they are not held. It also said that responses from the National Grid and Western Power could be found in the Consultation Statement June 2016 on the

Burghill Parish Council's website on the NDP page, however this is not the case.

73. The Commissioner has taken account the lack of relevant records management procedures which the council was working under. Whilst she understands the complainant's argument that the steering group was acting as a sub-committee of the council and therefore information generated by this group falls within the scope of council information, she recognises that group members may not have understood this to be the case and without the guidance being provided to them they may not have known what information they needed to retain and make available to the council.
74. The group developing the NDP appear not to have had relevant records management training when agreeing to volunteer in the role, and it appears that even councillors were working to a system where procedures for adequate record taking on decisions and discussions leading to decisions were not in place. That being said the council has published the majority of information on the development of its NDP on its website, and did therefore keep the public informed of its decisions. It is noted however that the first attempt to confirm the NDP was refused on the basis of inadequate evidence of adequate consultation being made and other factors.
75. The evidence suggests that further information was held by the council in the past, however, it has now been destroyed. As a result of poor records management procedures it was reliant on steering committee members to retain documents on their personal computers. No guidance had been provided however clarifying that information should be retained and/or copies passed to the council's clerk. Where information was provided to the former parish clerk the council argues that this was subsequently not retained after she left the council because it was considered that all documents of relevance had already been published on the council's website. Copies of some documents were placed onto the relevant websites however other information was not retained. Information previously held by the council therefore appears to have been deleted without a record made of its destruction.
76. The Commissioner also notes the clerk's argument that she is reliant upon members and individuals on the steering group to have carried out adequate searches on their private computers as she has no access to carry out her own searches on these in her capacity as clerk to the council.

77. Whilst this is clearly a case where poor practice may have led to relevant information being destroyed, at this point the council is only in a position to state what information it currently holds, and in this case it has done this and disclosed the information to the complainant which it has located, or otherwise directed him to the councils' websites to obtain that information.
78. For its part the council has recognised that it has not followed good practice previously and is currently seeking to introduce new records management procedures to ensure that this sort of information is captured in the future.
79. The central issue for the complainant is that the council has taken inadequate steps to ensure that the NDP has been developed appropriately and is a fair representation of the community's views. In his request he has sought information to enable him to identify whether the council took appropriate steps when preparing the NDP. The fact that the council has not retained all of the information which he has requested will obviously raise his concerns on this point.
80. For clarity, it is not the Commissioner's role to consider or comment on procedural concerns about the development of the NDP. She must purely consider whether the information requests have been responded to as required by the FOI Act and the Regulations. The issues with the council's record keeping is a matter for the complainant to take forward if he considers that this affects the integrity of the NDP proposal.
81. On a balance of probabilities therefore, the Commissioner's decision is that the council was correct to state that it does not hold any further information falling within the scope of the request.

Right of appeal

82. 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@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

83. 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.

84. 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
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