

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

Decision notice

Date: 13 September 2018

Public Authority: Goring on Thames Parish Council
Address: Old Jubilee Fire Station
Red Cross Road
Goring
Reading
RG8 9HG

Decision (including any steps ordered)

1. The complainant has requested that the Goring on Thames Parish Council provides copies of email correspondence between a volunteer working group and a private company, carrying out work relating to the development of the Goring Neighbourhood Plan. In addition plans, drawings or proposals submitted to the Goring Neighbourhood Plan steering group or sub-group were requested.
2. Goring on Thames Parish Council disclosed some of the information requested but stated that the email correspondence was not held in its own records.
3. The Commissioner's decision is that that under regulation 3(2)(b) of the EIR, any information falling within the scope of the request, that is held by the volunteer working group, is held by the council.
4. The Commissioner requires Goring on Thames Parish Council to take the following steps to ensure compliance with the legislation:

Confirm or deny whether any information is held and issue a fresh response that complies with the terms of the EIR.

Request and response

5. On 10 May 2017 the complainant wrote to Goring on Thames Parish Council ('the council') and requested information in the following terms:

"Please provide the following information under the Freedom of Information Act (FOI):

1. A copy of all emails between the Goring Neighbourhood Plan Steering Group members, or members of any Neighbourhood Plan sub-groups and the consultant Bramhill Associates. Having viewed guidance on the FOI I understand that since the work was carried out using public funding and on behalf of the Parish Council you are required to find and release this information even where emails are held on private accounts.

2. A copy of any plans, drawings or proposals submitted to the neighbourhood Plan Steering Group or sub-groups relating to the site GNP6. In the event that any such information is withheld for any reason including commercial sensitivity please advise specifically what information is held by the Steering Group or sub-groups."

6. The council responded on 8 June 2017 and provided information in relation to part 2 of the request however it denied holding the remainder. Specifically it stated that:

"In regard to number 1, copies of emails are not held by the parish council, but the information given to Bramhill Design is published within their reports on the Goring Plan website [links provided]."

7. Following an internal review the council wrote to the complainant on 27 June 2017. It stated that:

"Regarding your further request on the subject of emails between the Neighbourhood Plan (NP) and Bramhill Design. I regret to say that despite my best efforts I still am not able to get hold of any emails.

I have made enquiries and the information I have been given is that only one person was in touch with Bramhill by email specifically regarding the consultancy for the NP.

That person; the chair of the Site Selection Group has refused to provide me with any emails and I have also tried to get copies from Bramhill. Both have claimed that they do not believe they are required to release them."

Scope of the case

8. The complainant contacted the Commissioner on 3 July 2017 to complain about the way the request for information had been handled. Specifically regarding emails that may have passed between Bramhill Design and the Site Selection Working Group ('the SSWG') about the Landscape Capacity Study. The complainant raised concerns about the transparency of information that may have affected the Goring Neighbourhood Plan.
9. Bramhill Design are a private company who were engaged to complete a '*Landscape and Visual Appraisal and Capacity study*' for 15 sites identified by local landowners with potential for housing development in connection with the Goring Neighbourhood Plan.
10. The council advises that it sought volunteers from the local community in conjunction with the neighbourhood planning process for Goring. Over 60 volunteers came forward. A steering group was nominated, (the Neighbourhood Plan Steering Group ('the NPSG')) and appointed by the council as an advisory committee. This steering group then allocated aspects of the work to working groups, one of which was the SSWG.
11. The council has advised that the volunteer [name redacted] was the only person from the SSWG in correspondence with Bramhill Design.
12. The council's position is that regulation 3(2) (information held / not held) of the EIR does not apply to the emails that may have passed between Bramhill Design and the volunteer member of the SSWG. It states that the council does not hold this information, which it considers to be outside of the remit of the EIR.
13. The Commissioner considers the scope of the case to be whether, from the standpoint of the EIR, any information relevant to the request is held by the council; or held on behalf of the council by either the volunteer member of the SSWG or Bramhill Design.

Background

14. The SSWG arranged for a '*Landscape and Visual Appraisal and Capacity study*' to be completed by a private company. The SSWG sought proposals from a number of design companies and through the NPSG recommended to the council the supplier. The NPSG produced a document named "*Assessment of consultant submissions*" in which it recommended Bramhill as the supplier.

15. The council approved the awarding of the work to Bramhill and paid for the study to be completed. The council advise that no contract was agreed or signed between the council and Bramhill Design.
16. The council has informed the Commissioner that most of the dealings to and from Bramhill were done through the volunteer member of the SSWG, including the original briefing for the work.
17. The council advises that it *"did not oversee the business. The point of involving volunteers from the community is to allow them to carry out the work and engage with the community and to present the draft plan to the council."*

Reasons for decision

Regulation 5(1) – Duty to make information available on request

18. Regulation 5(1) states that any person making a request for information is entitled to have that information communicated to them. This is subject to any exceptions that may apply.
19. In the circumstances of this case the council has advised that any information in scope of the request would be held by a third party and not by the council. The Commissioner must therefore determine whether the council is correct in its assertion that it does not hold any information, by way of regulation 3(2) of the EIR.
20. The Commissioner firstly considered whether the SSWG could itself be considered a public authority. The Commissioner found that the SSWG is not a public authority as defined in regulation 2(2) of the EIR. She therefore will determine whether or not the information is held by the council.

Regulation 3(2) – Information held / not held

21. Section 3(2) of the EIR states that:

For the purposes of these Regulations, environmental information is held by a public authority if the information—

(a) is in the authority's possession and has been produced or received by the authority; or

(b) is held by another person on behalf of the authority.

22. During her investigation the Commissioner has considered whether the information is held by the council in its own records, regulation 3(2)(a), or whether the information is held by another body on its behalf, regulation 3(2)(b).

3(2)(a)

23. The Commissioner's guidance on regulation 3(2) "*Information held by a public authority for the purposes of the EIR*"¹ views that if information has been received by the council, even if it is not the creator of the information, then it is held for the purposes of the EIR.
24. The council states that any emails which may have been exchanged between the SSWG and Bramhill Design were not copied to the council.
25. During the Commissioner's investigation the council verified that it had "*conducted searches, on the Council's single workstation using Microsoft Outlook search tools across all email folders. In addition all Members of the Neighbourhood Plan Steering Group were asked to check their personal computers for the same information. All responded that they had had no communication by email with Bramhill Design.*"
26. The council advised that the information it had received comprised the draft plan and background documents which have already been published for the Village Consultation on 31 October 2017. The council maintains that there is no statutory requirement for it to hold copies of any such emails between Bramhill Design and the SSWG and that there was no requirement for it to oversee this business.
27. The Commissioner is therefore satisfied that, on the balance of probabilities, the requested information is not in the council's possession as it has not been produced or received by the council.

3(2)(b)

28. The Commissioner's interpretation of regulation 3(2)(b) is that information is held by a public authority under the terms of the EIR if it is held by another person, which means a legal person and could be an individual or an organisation, for the public authority's own purposes.

¹ https://ico.org.uk/media/for-organisations/documents/1640/information_held_for_the_purposes_of_eir.pdf

29. The council has confirmed that the members of the SSWG are not council committee members, nor have they entered into any contractual relationship with the council. They are unpaid volunteers from amongst the villagers that were not required to sign a code or contract or submit declarations of interest. The council advises that it allowed the SSWG to execute the work required to present a draft plan to the council. Part of this work was the engagement of Bramhill Design, albeit funded by the council.
30. The council maintains that there is no direct arrangement by which the council has access to the emails exchanged between Bramhill Design and the SSWG and there is no contract in place that grants the council rights over any information held. The council advised it was only interested in the output of the work and not the oversight of the process itself.
31. The Commissioner has considered the councils submissions regarding the lack of written contracts or other formal arrangements. She finds that, on balance, it appears the council does not control the SSWG. However it is still arguable that the information may be held by the SSWG on behalf of the council within the meaning of regulation 3(2)(b).
32. Although the council asserts that the information was created by and relates to activities of members of the SSWG, the Commissioner notes that the SSWG exists because of a decision of the council to arrange for neighbourhood groups, such as the NPSG, to develop a neighbourhood plan.
33. The Commissioner appreciates that the council's motive for this arrangement may be to foster public engagement or to save costs. However she finds that the council has in effect delegated to unpaid local groups work that it might normally be expected to carry out for the public. It is the council that ultimately carries legal responsibility for the neighbourhood plan, even where it has appointed community groups to work on it. The fact that it paid for works instigated by the SSWG supports this contention.
34. The government has set out its vision for engaging community groups in neighbourhood plans. It appears from the published guidance² that

² <https://www.gov.uk/guidance/neighbourhood-planning--2#who-leads-neighbourhood-planning-in-an-area>

arrangements between a council and community groups should be clear and transparent, presumably to avoid confusion and doubts such as those arising in this case. The guidance states:

"What is the role of a parish or town council in neighbourhood planning? In a designated neighbourhood area which contains all or part of the administrative area of a town or parish council, the town or parish council is responsible for neighbourhood planning.

Where a parish or town council chooses to produce a neighbourhood plan or Order it should work with other members of the community who are interested in, or affected by, the neighbourhood planning proposals to allow them to play an active role in preparing a neighbourhood plan or Order.

The relationship between any group and the formal functions of the town or parish council should be transparent to the wider public. A parish or town council may choose to establish an advisory committee or sub-committee under section 102(4) of the Local Government Act 1972³ and appoint local people (who need not be parish councilors) to those bodies. Members of such committees or sub-committees would have voting rights under section 13(3), (4)(e) or (4)(h) of the Local Government and Housing Act 1989⁴. The terms of reference for a steering group or other body should be published and the minutes of meetings made available to the public."

35. The Commissioner explains in her guidance⁵ the circumstances where information would be considered held on behalf of a public authority, which are relevant in this case:

"Information held on behalf of a public authority as a result of partnership or consortia arrangements – when public authorities work in partnership or in a consortium (ie those arrangements which do not have the legal status of a body or organisation separate to the individual partners), they need to be certain what information is held

³ <http://www.legislation.gov.uk/ukpga/1972/70/section/102>

⁴ <http://www.legislation.gov.uk/ukpga/1989/42/section/13>

⁵ <https://ico.org.uk/media/for-organisations/documents/1640/information-held-for-the-purposes-of-eir.pdf>

on behalf of each partner or member. This will arise in the public sector when the partners, who are otherwise independent bodies, agree to co-operate to achieve a common goal, create an organisational structure and agreed programme and share information, risks and rewards.

Examples include:

- *local strategic partnerships*
- *road safety partnerships*
- *local environment partnerships*
- *economic partnerships*

25. In general terms, information that is brought to the partnership by one of the partners is regarded as being held by or on behalf of all partners. As there are various partnership arrangements it is not possible to provide guidance that will cover all of them. Much will depend on the individual arrangements of the partnership as to whether or not all information is held by all the partners or whether some is held by the partners solely on behalf of one of them."

36. Examples include where a public authority has entered into a local partnership arrangement with another body. In this case, the council has entered into an arrangement with the NPSG which in turn appointed the SSWG to carry out particular activities. The SSWG then appears to have negotiated with contractors and entered into a contractual arrangement (the fact that it is not documented is irrelevant) which the council paid for. The Commissioner considers that the council must therefore have had some role in these arrangements (whether formally written down or not is immaterial) giving its approval to the works, perhaps in advance, or by implication. It is not plausible that a contractor would have agreed to carry out works in this scenario unless it was convinced that the SSWG had the backing of the council and the council would be responsible for payment.
37. Emails held by SSWG members in their own private email accounts will still be held on behalf of the council if that the information forms an integral part of the work the SSWG was carrying out on the council's behalf. The commissioner understands that it is likely that the individual concerned was corresponding with contractors about work delegated by the council to the NPSG and then in turn to the SSWG. Without the involvement of the council in assigning roles in respect of neighbourhood planning, and without the council paying the costs of any ensuing works, the work would not have taken place. This suggests that the contractors perceived there to be evidence of a genuine and practical link between

the groups and the council and therefore that the SSWG was carrying out the business of the council.

38. Conversely it could be argued that it is not clear that the council has delegated any of its work regarding neighbourhood planning to the SSWG, and therefore that the information, ie emails with the contractors, is not to any extent part of the business purposes of the council. Although the council appointed the NPSG, the SSWG is at one remove from the council, and the council maintains that there are no formal arrangements in place, such as a declaration of interests by members. However as stated earlier, information that is to any extent relating to the business purposes of the council will indeed be held on its behalf. The administrative arrangements might provide evidence but are not conclusive evidence against the practical reality and the public perception of the arrangements.
39. As such the Commissioner determines that information held by the NPSG or the SSWG is for the business purposes of the council. It follows, therefore, that if any information is held by the SSWG member, then it is held on behalf of the council under regulation 3(2)(b).
40. The Commissioner's decision is that that under regulation 3(2)(b) of the EIR, any information falling within the scope of the request, that is held by the SSWG, is held by the council.
41. The Commissioner therefore requires the council to confirm or deny whether the information is held and issue a fresh response that complies with the terms of the EIR.

Right of appeal

42. 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

43. 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.
44. 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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