

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

Date: 27 September 2023

Public Authority: Dartmoor National Park Authority
Address: Parke
Bovey Tracey
Newton Abbot
Devon
TQ13 9JQ

Decision (including any steps ordered)

1. The complainant has requested information relating to a specific planning application. Dartmoor National Park Authority ("the public authority") disclosed information in response to the request and withheld some under regulation 12(4)(e) (internal communications).
2. The Commissioner's decision is that:
 - On the balance of probabilities, the public authority has now identified all information that falls within the scope of the request and the information that's been redacted falls out of the scope of the request.
 - The withheld information doesn't engage regulation 12(4)(e) (internal communications).
 - The public authority has breached regulation 5(2) (timescale for compliance).

3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Any information that falls within the scope of the request, and was withheld under regulation 12(4)(e), must be disclosed.
4. 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 the Act and may be dealt with as a contempt of court.

Request and response

5. On 8 April 2023 the complainant made the following request for information:
 - "1. Any correspondence, emails or notes of conversations concerning our application between planning officers, including [Redacted], [Redacted], [Redacted] and [Redacted].
 - 2. Any correspondence, emails or notes of conversations concerning our application between other DNPA staff, committee members or DEFRA/ Natural England etc.
 - 3. Any notes, reports or photographs taken of the site by any planning officer or DNPA employee and the dates/ times of any visits and by whom.
 - 4. Any notes, emails or records of conversations between DNPA staff and [Redacted], our representative from Bateman and Hosegood.
 - 5. Any responses to our planning application since September 2022."
6. On 5 May 2023, the public authority responded and disclosed information with redactions made under regulation 13 (personal data). It also explained that information was being withheld under section 21 (information reasonably accessible to applicant via other means) and regulation 12(4)(e) (internal communications).
7. The complainant requested an internal review on 7 May 2023.
8. The public authority provided the outcome to its internal review on 27 June 2023. It rescinded its reliance on regulation 12(4)(e), explaining the exception should not have been included in its refusal notice. It confirmed that all information relevant to the request had either been disclosed or was available in the public domain.

Scope of the case

9. At the time of raising their complaint with the Commissioner, the complainant expressed concerns about the redactions made to the disclosed information and the public authority's position that no further information (other than that in the public domain and had been disclosed) was held.
10. The Commissioner notes the public authority has applied section 21 of FOIA but the request has been dealt with under the EIR. However, since the complainant hasn't raised any concerns about the information that's in the public domain, the Commissioner won't consider it any further.
11. During this investigation, the public authority identified further information that fell within the scope of the request. It disclosed some to the complainant and went back to relying on regulation 12(4)(e) to withhold other information.
12. Therefore, the scope of the Commissioner's investigation is to determine whether all information that falls within scope of the request has been identified and, to the extent that any information has been withheld, whether it was appropriate.

Reasons for decision

Is the requested information environmental?

13. Regulation 2(1) of the EIR defines environmental information as being information 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)...as well as measures or activities designed to protect those elements;

- (d) reports on the implementation of environmental legislation;
 - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
 - (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 of the matters referred to in (b) and (c);
14. As the requested information relates to a planning application, the Commissioner believes that it falls under the definition of environmental information at regulation 2(1)(c). Therefore, the Commissioner has considered this case under the EIR.

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

15. At the time of raising their complaint, the complainant stated 'Given the application was submitted in July 2022 and was not decided until May 2023 and there were at least 3 planning officers involved, I do not believe that there are no case records or communications relating to it.'
16. During this investigation, the public authority did identify communications relating to the planning application but the complainant is concerned that more information is held. In cases where a dispute arises over the recorded information held by a public authority at the time of a request, the Commissioner, following the outcome of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities. This means that the Commissioner will determine whether it is likely, or unlikely, that the public authority has identified all information that's falls within the scope of the request.
17. First and foremost, the public authority has explained that 'Due to sickness absence of the initial case officer (redacted) the application was reallocated to another member of our team (redacted) and then assigned to an agency planner (redacted) to progress. (Redacted) carried out a site visit, however, there are no case records or communications that have not already been disclosed.'
18. The public authority has explained that the lack of case records relating to the site visit is a performance issue. This falls outside of the remit of

the Commissioner to comment on – he can only determine whether a request for information has been handled appropriately; not whether information should be held.

19. In order to determine whether the public authority had identified all relevant information, the Commissioner asked the public authority to explain the searches it had undertaken to locate any information that would fall within the scope of this request and to explain why these searches would have been likely to locate all of the information in scope.
20. The public authority explained that searches were carried out in its planning systems, as well as internal files, folders and electronic documents held by the planning team. The search terms used include: the application number, the surname of the complainant (who is involved in the application), Bateman and Hosegood and the name of the site.
21. The public authority explained that 'the planning team may hold manual records (e.g. notes of internal/external meetings) and, where necessary, file notes are added to the electronic planning system by the case officer.'
22. The Commissioner is satisfied that all relevant information would either be held by the relevant planning officers or on the planning system. The public authority has also confirmed 'the individuals named within the request were consulted and confirmed that all of the information relevant to the scope of the request has been identified.'
23. The Commissioner is satisfied that the public authority has conducted targeted and logical searches, on appropriate systems and using relevant terms. On the balance of probabilities, the Commissioner is satisfied that all information within the scope of the request has now been identified and either disclosed or withheld under regulation 12(4)(e).
24. Furthermore, the Commissioner has considered the information the public authority has redacted under regulation 13 because its personal data. The Commissioner agrees, it is personal data as it relates to planning applications at other addresses.
25. However, it's worth remembering that the EIR relates to information and not whole documents. Planning officers deal with more than one application at a time and therefore, some working documents contain information that's within scope of the request but also information that's not. This personal data relates to applications that have been handled by one of the planning officers named in the request but they aren't linked to the planning application with which the complainant is concerned. So,

this personal data first and foremost falls outside of the scope of the request and the complainant isn't entitled to receive it.

Regulation 12(4)(e) – internal communications

26. The public authority has identified further information and withheld it under regulation 12(4)(e), which concerns internal communications.
27. The information is notes contained within a planning officer's notebook. The Commissioner notes that, of the 15 pages of handwritten notes, the relevant planning application is mentioned about half a dozen times.
28. Regulation 12(4)(e) applies to any information an individual intends to communicate to others within the public authority. Physical information, such as handwritten notes, has the potential to be captured by this exemption.
29. However, looking at the information the Commissioner isn't convinced that it constitutes an internal communication. The Commissioner's guidance¹ on regulation 12(4)(e) states 'Communications do not include information recorded simply to be used by its author, eg an aide-memoire, unless this records the content of other communications, such as personal notes of an internal meeting or discussion.'
30. The Commissioner can see that photographs of these notes were sent internally within the organisation on 13 September 2023. However, this was for the purpose of complying with the Commissioner's investigation and the information was not created with the purpose of communicating information to another individual.
31. The withheld information don't appear to be write ups of any meetings or discussions; they appear to be notes and to do lists solely for the planning officer's consideration. Therefore, the withheld information doesn't constitute an internal communication and regulation 12(4)(e) isn't engaged.
32. To reiterate, out of 15 pages of handwritten notes there are only half a dozen entries that fall within the scope of this request. Mostly, these entries just refer to the name of the application, the address or the application number.

¹ [What are internal communications? | ICO](#)

33. As outlined in paragraph 4, the public authority must only disclose information that falls within scope. It will either have to redact the photographs heavily or lift out the entries in question.
34. This information won't be particularly useful to the complainant but hard copies of information are covered by the EIR and since the public authority has failed to explain why it is exempt it must be disclosed.

Procedural matters

35. In failing to disclose all non-exempt information within twenty working days of receipt of the request, the public authority has breached regulation 5(2) of the EIR.

Other matters

36. The Commissioner acknowledges that a public authority is entitled to change its position when handling a request for information. The Commissioner also accepts that administrative errors can occur. However, the public authority applied, and then rescinded, and then applied again (but didn't inform the complainant) regulation 12(4)(e). Had it not done so, the Commissioner believes this complaint could have been avoided.

Right of appeal

37. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

38. 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.
39. 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

Alice Gradwell
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF