

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

Date: 11 October 2023

Public Authority: Test Valley Borough Council
Address: Beech Hurst
Weyhill Road
Andover
SP10 3AJ

Decision (including any steps ordered)

1. The complainant requested communications from named Councillors relating to a specified address or planning application. Test Valley Borough Council (the Council) ultimately provided the information it holds.
2. The Commissioner's decision is that the Council breached regulation 5(2) (Duty to make available environmental information on request) of the EIR as it did not provide all the information it held within the required 20 working days.
3. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

4. On 14 December 2022, the complainant wrote to the Council and requested information in the following terms:

"I would like to request any communication had with Hampshire County Council relating to either the address of [address redacted]"

or planning application [reference redacted] from the following Councillors:

[Names redacted]”.

5. The Council responded on 21 March 2023. It confirmed that it holds some information within the scope of the request, and it provided that information to the complainant.
6. The complainant was dissatisfied and requested a review.
7. The Council subsequently wrote to the complainant on 18 April 2023, and provided additional e-mails which were found as part of a new search.
8. There was further correspondence between the parties as the complainant remained dissatisfied with the Council’s handling of the request.
9. The Council wrote to the complainant on 9 June 2023, explaining how it conducts searches for emails relating to Town Councillors as opposed to Borough Councillors. It also advised that, as a result of a recent upgrade to the Council’s system, further searches may be possible and had been requested.

Scope of the case

10. Following earlier correspondence, the complainant contacted the Commissioner on 12 July 2023 to complain about the way their request for information had been handled. He confirmed that he was still awaiting the outcome of the Council’s additional searches.
11. On 1 September 2023, during the course of the Commissioner’s investigation, the Council provided the complainant with a small amount of additional information. In its correspondence, it provided a full explanation of how the request had been handled and apologised to the complainant for the ‘convoluted path’ taken to resolve the request.
12. Where possible, the Commissioner prefers complaints to be resolved by informal means. However, while acknowledging the Commissioner’s summary of the situation, the complainant remained dissatisfied and wrote to him expressing their dissatisfaction with the Council’s performance.

13. The Commissioner considers that the scope of his investigation is to consider whether the Council responded to the request in accordance with the EIR.

Reasons for decision

Regulation 5 – Duty to make available environmental information on request

14. Regulation 5(1) of the EIR states that:

“a public authority that holds environmental information shall make it available on request.”

15. Regulation 5(2) of the EIR states that:

“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.”

16. The Commissioner notes that while the complainant submitted their request on 14 December 2022, the Council did not respond until 21 March 2023. He also notes that the Council subsequently located and provided more information.
17. Accordingly, the Commissioner has recorded a breach of regulation 5(2) of the EIR.

Other matters

18. The Commissioner recognises that the Council provided the complainant with a detailed chronology of the handling of their request and explained how it had reviewed the searches conducted and parameters used.
19. The Commissioner also acknowledges that the Council has taken steps to remind the relevant individuals of the most effective way, in a case such as this, to locate requested emails, and of the importance of clarifying what timescales a requester is looking at.
20. The Commissioner welcomes the steps the Council has taken to address these shortcomings and expects that it will have due regard to these steps in future.

21. He also recommends the FOI Self-Assessment toolkit on timeliness¹ to the Council.

¹ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/foi-self-assessment-toolkit/topic-1-timeliness/>

Right of appeal

22. 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

23. 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.
24. 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

Michael Lea
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