

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

Date: 10 September 2024

Public Authority: Hart District Council
Address: Harlington Way
Fleet
GU51 4AE

Decision (including any steps ordered)

1. The complainant has requested correspondence relating to a specific planning condition. The above public authority ("the public authority") provided some information but the complainant believes more is held.
2. The Commissioner's decision is that, on the balance of probabilities, the public authority has now disclosed all the information it holds that falls within the scope of the request. The public authority breached regulation 5(2) of the EIR as it failed to make some environmental information available within 20 working days. The public authority discharged its obligations under regulations 9 and 11 of the EIR.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 23 February 2024 the complainant requested information of the following description:

"Please could you provide all information that HDC hold regarding the creation, progress and discharge of Condition 35 to 14/00504/MAJOR (reference 23/01658/CON). "

"I can access the information available on the planning portal so this information does not need to be supplied."

5. On 6 March 2024, the public authority responded and provided some information.
6. The complainant requested an internal review on the same day. The public authority sent the outcome of its internal review on 11 April 2024. It provided some additional information.

Reasons for decision

Is the requested information environmental?

7. As it is information relating to planning policy, the Commissioner believes that the requested information is likely to be information on a measure, affecting the elements of the environment. For procedural reasons, he has therefore assessed this case under the EIR.

Regulation 5(1) – information held

8. Where there is a dispute over the extent of the information a public authority holds, the Commissioner must decide whether it is more likely than not that the public authority has identified everything it holds.
9. After the public authority provided its internal review, the complainant contacted it again and identified three specific instances in which officers of the public authority had indicated that they had, or would, contact internal or external parties. The complainant noted that he had not been provided with copies of these communications and they did not appear to be published elsewhere.
10. The complainant had made a separate request for this information, after receiving the internal review, but before the Commissioner had begun investigating this complaint. That request had resulted in a small amount of emails being disclosed. However the complainant was still not satisfied that he had received all the information he had requested. He also argued that the information he did receive should have been provided in response to his original request.
11. The Commissioner put these three categories of information to the public authority specifically and also asked it more generally to describe the searches it had carried out.
12. The public authority explained that it had searched its internal email systems using the site address of the development, the planning reference numbers, the name of the developer and the names of its staff who had dealt with this specific development.

13. The public authority accepted that it had a duty to retain some of this information on its planning register but not all correspondence was required to be retained and some older information may have been deleted or destroyed in line with its retention policy.
14. The public authority has also explained to the complainant in response to other requests that the history of this particular planning condition (it was a condition imposed by a Planning Inspector rather than one the public authority had required) would suggest that it was unlikely to hold much information about the creation of the condition.
15. When the Commissioner asked about the specific categories of information the complainant had referred to, the public authority responded to say that this information had either already been provided, was already published or did not exist in recorded form because the communication (if it had taken place) had taken place verbally.

The Commissioner's view

16. In the Commissioner's view, it is more likely than not that the public authority has now made available all the information it holds.
17. Having seen the additional correspondence that the public authority provided in response to the later request, the Commissioner agrees with the complainant that this should have been provided in response to the original request. This will be addressed further below.
18. The complainant has referred to some ambiguity in respect of the later request in that the public authority did not explicitly provide a confirmation or a denial that it held information in respect of each category – simply referring to information it was disclosing.
19. The Commissioner accepts that this response could have been clearer about the information that was and was not held. The internal review could also have provided some clarity on the matter. However, the procedural handling of that request is outside the bounds of this decision. The responses are only relevant to this decision insofar as they indicate that the public authority does or does not hold further information beyond that already provided.
20. In the Commissioner's view, the most natural reading of the public authority's response was that the only information it held within the scope of any part of the later request was that which it was providing in its response. He does not consider that the wording of the response indicates further information is held in recorded form.
21. Moreover, the public authority has explicitly confirmed to the Commissioner that it has addressed this point directly and is satisfied

that no information is held in recorded form other than that already published. The Commissioner has not seen any evidence that undermines this.

22. The terms of the request make clear that it excludes any information that the public authority had already made available on the planning portal. Therefore the public authority is not obliged to provide, or even make reference to, any information that is already available.
23. The Commissioner also recognises that the history of the planning condition indicates that the public authority is likely to hold less information than might usually be the case.
24. The Commissioner accepts that not all information was provided with the public authority's initial response and that the "drip-feeding" of information may well have contributed to the complainant's scepticism that no further information is held. However the Commissioner now believes it is more likely than not that all information falling within scope has been provided.

Procedural matters

Regulation 5(2) – timeliness of response

25. As the public authority did not disclose all the information it held within the scope of the request within 20 working days, it breached regulation 5(2) of the EIR.
26. The complainant was unhappy that the public authority's initial response said that it had dealt with the request under FOIA – although the internal review accepted that the EIR was the correct regime. In the Commissioner's view this does not amount to anything.
27. There is no difference in substance between the requirement under section 1(1) of FOIA to communicate information and the requirement under regulation 5(1) of the EIR to make environmental information available on request. Under both pieces of legislation, the public authority is required to decide what information it holds and then provide copies to the requester – unless there is a legal justification for withholding it. Under both pieces of legislation, this should usually happen within 20 working days.
28. The public authority responded to the request within 20 working days and it provided some information. Whether it labelled its response as one under FOIA or EIR is a distinction without a difference. Its duty was to provide the information and it provided information.

29. Admittedly the public authority did not provide **all** the information it held, but the Commissioner has already recorded a corresponding breach of the EIR. In any case, it is not clear why the public authority would have provided a better response if it had purported to deal with the request under the EIR from the outset.

Regulation 11 – reconsideration (internal review)

30. The complainant has argued that the public authority failed to complete its internal review within the legal timeframe for doing so. He requested a review on 8 March 2024 and the public authority provided one on 11 April 2024.
31. A public authority may take up to 40 working days under the EIR to provide the outcome of its internal review. This internal review was provided well within 40 working days and therefore the public authority complied with its obligations under regulation 11 of the EIR.

Regulation 9 – advice and assistance

32. Finally the complainant argued that the public authority failed to discharge its duty under regulation 9 to provide advice and assistance.
33. The [EIR Code of Practice](#) provides examples of steps that a public authority can take to provide reasonable advice and assistance. These include outlining the types of information it holds and directing the requester to indexes of more detailed information.
34. In the circumstances of this case, the Commissioner considers that the complainant was clearly familiar with the information that was in the public domain – or at least was aware that he could access it. The request was clear in what it was seeking and did not require clarification.
35. The complainant's concern about the public authority's provision of advice and assistance appears to stem from the fact that not all the information the public authority held was initially provided to him.
36. If a public authority holds additional information that falls within the scope of a request, its obligation is to provide that information – not to inform the requester that they can make a further request for it.
37. In the Commissioner's view, there was no advice and assistance that the public authority could reasonably have been expected to have offered. There was further information that it should have disclosed, but this is already covered as a breach of regulation 5(2).
38. No regulation 9 obligation arose and therefore there was no breach.

Right of appeal

39. 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

40. 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.
41. 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

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