

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 24 September 2024

Public Authority: South Tyneside Council
Address: Town Hall & Civic Offices
Westoe Road
South Shields
NE33 2RL

Decision (including any steps ordered)

1. The complainant has requested information regarding a change to meeting minutes which discuss a specific planning application. The South Tyneside Council (the Council) provided some information within the scope of the request, but advised that no further information within the scope of the request was held.
2. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold any additional information within the scope of the request.
3. The Commissioner does not require further steps.

Request and response

4. On 15 March 2024, the complainant wrote to the Council and requested information in the following terms:
"1. Reasons, including all correspondence, internal and external, emails, reports and memorandums and all the information received and sent by the Council, why the following statement(s), which concerned the Cleadon Lane development (ST/1109/21/FUL), was removed from

page 20 of the draft Minutes of the Planning Committee meeting which took place on Monday 13th February 2023:

'Their statutory role to determine planning applications exists under the planning legislation and not under the Water Industry Act. The planning committee report sets out that NWL have a legal duty under Section 94 of the Water Industry Act to ensure that the sewer treatment network is maintained, improved and extended to meet growth demands and that NWL will invest where capacity in the network is required.'

2. Reasons, including all correspondence, internal and external, emails, reports and memorandums and all the information received and sent by the Council that relates to why the Council has ignored all previous requests from STEP for an explanation for altering the Minutes of a Planning Committee meeting which took place on 13th February 2023"
5. The Council responded on 26 April 2024. It provided some information within the scope of the request for question one, but advised that no information was held for question two. A position which was upheld by the Council in its internal review.

Scope of the case

6. The complainant contacted the Commissioner on 7 June 2024 to complain about the way their request for information had been handled.
7. The Commissioner considers the scope of his investigation is to consider, on the balance of probabilities, whether the Council holds any information within the scope of the request for the second question.

Reasons for decision

Is the requested information environmental?

8. 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);
9. As the requested information relates to a planning application, the Commissioner believes that the requested information is likely to be information on measures that are likely to affect the elements of the environment. For procedural reasons, he has therefore assessed this case under the EIR.

Regulation 5(1)– information not held

- 10. Regulation 5(1) of the EIR requires a public authority that holds environmental information to make it available on request.
- 11. Regulation 5(2) of the EIR allows a public authority that holds environmental information to be made available no later than 20 working days after the date of receipt of the request.
- 12. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to check that the information is not held and he will consider any other reasons offered by the public authority to explain why the information is not held. The Commissioner will also consider any reason why it is inherently likely or unlikely that information is not held.

13. The Council advised the Commissioner that on receipt of the request it conducted a search of emails for any meeting minutes, draft or completed, which related to the Planning Committee meeting. It confirmed that during this search it was able to locate the original email with the draft meeting minutes which was sent internally for comments. This information was disclosed to the complainant at the time of the request.
14. It conducted further searches using the terms "Minutes of planning committee meeting 13/2/23". This term was used in the subject of the original email located and the Council advised it would be likely that any follow up emails would have the same subject. Alongside these searches, the Council also contacted all recipients of the draft minutes to ensure that no further information was held.
15. The Council explained that it also conducted a further search using the term "ST/1109/21/FUL" which was the development reference that was referred to in the specific minutes. The Council confirmed that both search terms would have located any correspondence within the scope of the request.
16. The Council advised that its ICT policies restrict any documents from being saved locally on personal computers, therefore it did not deem it necessary to conduct searches on these computers, but, as previously mentioned, recipients were asked to ensure no further information was held.
17. The Council confirmed that the draft minutes in questions are not circulated externally so there was no opportunity for any external comments to be made on them. However, the searches conducted would have located any external correspondence if anything existed.
18. The Council informed the Commissioner that it had no record of information being deleted or destroyed and that emails are held for 7 years after which they are securely destroyed. It added that any confirmed meeting minutes are held as a permanent record.
19. The Council concluded that it is only required to retain confirmed meeting minutes, meaning there is no obligation to retain copies of draft meeting minutes after they have been confirmed.

The Commissioner's decision

20. Having reviewed the response by the Council, the Commissioner notes that the Council is not expected to provide information in someone's head under EIR, nor is it required to provide explanations or reasons regarding decision making, unless the information is already held in a recorded form.

21. Based on the above, the Commissioner is satisfied that the Council has conducted adequate searches for the requested information. And, on the balance of probabilities, the Council does not hold any additional information within the scope of the request.

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.

Michael Lea
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