

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

**Date:** 24 October 2024

**Public Authority:** Wealden District Council  
**Address:** Vicarage Lane  
Hailsham  
East Sussex  
BN27 2AX

**Decision (including any steps ordered)**

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1. The complainant has requested information relating to drainage on a piece of land. Wealden District Council ("the council") said that it does not hold any information falling within the scope of the request.
2. The Commissioner's decision is that the council does not hold any information falling within the scope of the request.
3. The Commissioner does not require further steps.

## **Request and response**

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4. On 9 April 2024, the complainant wrote to the council and requested information relating to a statement made by the Chief Executive Officer of the Council, Trevor Scott, in the following terms:

“Foul Drainage – Horebeech Lane, Horam

On 27<sup>th</sup> February 2024 Chailey Homes received an email from Mr Scott (CEO) advising that he had replied on independent information and data in making an assessment of the foul drainage issue. We request copies of the independent information and data that Mr Scott’s refers to.”

5. The council responded on 9 May 2024. It applied Regulation 6(1)(b) of the EIR (information available to the requestor in another format), and provided the complainant with a web link to where the requested information could be located.
6. Following an internal review request, the council wrote to the complainant on 4 June 2024. It revised its position to state that:

“Mr Scott’s email referred to independent data which was intended to refer to the data set out in the letter from [name of case officer redacted by the ICO] to Southern Water dated 15 January 2024. This data is held by the Rivers Trust and is referred to in the Council’s considerations. Wealden District Council does not hold this information and cannot therefore provide it.”

## **Scope of the case**

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7. The complainant contacted the Commissioner on 7 June 2024 to complain about the way their request for information had been handled.
8. The complainant believes that the council will hold a copy of the requested information.

## **Reasons for decision**

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### **Regulation 12(4)(a) – information not held**

9. Regulation 5 of the EIR requires that a public authority that holds environmental information shall make it available on request. This is subject to any exclusions or exceptions that may apply.

10. Regulation 12(4)(a) of the EIR says that a public authority may refuse to disclose information to the extent that it does not hold that information when an applicant's request is received.
11. In scenarios where there is some dispute about whether a public authority holds relevant information, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
12. The Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the council to check that the information is not held, and he will consider any other reasons offered by it 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.

The complainant's position

13. The complainant argues that the council has not provided the information which the CEO of the council refers to in his letter dated 27 February 2024.
14. The complainant argues that the council will hold this information, and therefore that it should be disclosed in response to the request.

The council's position

15. The council firstly pointed out that the relevant letter stated that:

*"The Council is aware, **via the Rivers Trust Website**, of the following"* (highlighted by the ICO).

16. The Commissioner notes that the CEO goes on to state that:

**"It would appear from information in the public domain** that Southern Water's Infrastructure to which this development would connect is not able to cope with the existing demands upon it." (highlighted by the ICO).

17. The council said that the case officer who had written the letter of 4 June 2024 was asked whether he held copies of the information which he referred to in his letter. The officer, however, confirmed that no relevant information is held. The council argued that this officer would know whether any relevant information is held by it as he was the individual who wrote the letter to Southern Water, dated 15 January 2024, which made reference to the independent data.

18. The council further confirmed that if information were held by it, it would be held in electronic form.
19. It said that a search was conducted of the relevant officer's electronic system and no information was found outside of that already published on the council's planning portal.
20. Finally, it confirmed that no information has previously been held by it which has been deleted.

#### The Commissioner's conclusion

21. The Commissioner has considered both parties arguments in conjunction with the request.
22. The Commissioner recognises that the complainant believes that further information will be held by the council. However, the council confirmed to the Commissioner that, after speaking to the officer who wrote the letter, and after carrying out adequate and appropriate searches of areas of its systems where the information would be likely to be held, no further information has been located by it.
23. The Commissioner also notes the wording of the relevant letter strongly suggests that the officer relied upon publicly available information from the Rivers Trust website rather than on any information which is held by the council itself. The Commissioner considers that the wording of the letter makes it inherently unlikely that further information would be held by the council.
24. There is no contradictory evidence available to the Commissioner that indicates that the council's position is wrong.
25. On this basis the Commissioner has concluded that, on the balance of probabilities, the council does not hold the requested information.

#### **Public interest test**

26. Technically, Regulation 12(4)(a) contains a public interest test. However, the Commissioner cannot conceive of a public interest argument that would require a public authority to disclose information that it did not hold.

## **Right of appeal**

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27. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

28. 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.
29. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Ian Walley**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**