

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 12 December 2024

Public Authority: Waverley Borough Council
Address: The Burys
Godalming
Surrey
GU7 1HR

Decision (including any steps ordered)

1. The complainant requested information from Waverley Borough Council ("the Council") relating to a tree preservation order.
2. The Commissioner's decision is that on the balance of probabilities, the Council does not hold further information within the scope of the request.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 6 March 2024 the complainant wrote to the Council and requested information in the following terms:

"We write pursuant to the Freedom of Information Act and the Environmental Information Regulations to request the following information.

All emails and correspondence between the Council and third parties (including members of the public) together with any assessments or reports which preceded and informed the Council's decision to issue the Tree Preservation Order 06/24 dated 22 February 2024 relating to the period from 22 August 2023 to 22 February 2024."

5. The Council responded on 19 March 2024 and refused to provide the requested information citing regulation 12(5)(d) (confidentiality of proceedings) of the EIR as its basis for doing so.
6. On 24 March 2024 the complainant requested an internal review. The Council provided the complainant with the outcome of its internal review on 31 May 2024 in which it withdrew its reliance on regulation 12(5)(d) of the EIR and disclosed information within the scope of the request.

Scope of the case

7. The complainant contacted the Commissioner on 11 July 2024 to complain about the way their request for information had been handled. In their complaint to the Commissioner, the complainant stated that despite requesting all emails, correspondence, assessments and reports relating to a tree preservation order, the Council has provided them with a very limited amount of information in response to their request. The complainant therefore considers the Council to hold further information within the scope of their request which has not been disclosed to them.
8. Therefore, in this notice the Commissioner will consider whether the Council hold further information within the scope of the request which has not been disclosed to the complainant.

Reasons for decision

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

9. The task for the Commissioner where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request is to determine whether, on the balance of probabilities, the public authority holds any information relevant to the request which it has not already disclosed to the complainant.
10. In making this determination, the Commissioner will consider the complainant's evidence and argument and the actions taken by the public authority to check whether the information is held and he will consider any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is not held.
11. The Commissioner is not expected to prove categorically whether the information is held; he is only required to make a judgement on whether the information is held on the civil standard of the balance of

probabilities. Applying the civil test of the balance of probabilities is in line with the approach taken by the Information Tribunal when it considered the issue of whether information is held.

The Council's position

12. The Council considers that it has disclosed all the information it holds within the scope of the request. In its submissions to the Commissioner, the Council explained it has conducted "eDiscovery" searches of its email system, and electronic files and folders for information within the scope of the request.
13. The Council stated that when conducting its eDiscovery searches for information within the scope of the request, it searched for information dating between 22 August 2023 and 22 February 2024. The Council also explained that it used the search terms "06/24" and "06-24" when conducting its searches as any information held relating to the tree preservation order referred to in the request would be recorded on its systems as "06/24".
14. The Council stated that it has consulted the relevant officers within its planning team who confirmed that its searches will have located all information held within the scope of the request. The officers also advised that correspondence falling within the scope of the request would not be held in paper form as all correspondence was done electronically.

The Commissioner's position

15. Based on the explanations provided by the Council the Commissioner is satisfied that the Council has carried out reasonable searches for information within the scope of the request. He considers that when conducting its searches, the Council used appropriate and relevant search terms.
16. Therefore, the Commissioner's decision is that on the balance of probabilities, the Council does not hold further information within the scope of the request which has not been disclosed to the complainant.

Right of appeal

17. 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

18. 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.
19. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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