

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

**Date:** 16 December 2024

**Public Authority:** Thanet District Council  
**Address:** Cecil Street  
Margate  
Kent  
CT9 1XZ

**Decision (including any steps ordered)**

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1. The complainant requested information about excess waste at a named depot. Thanet District Council (the 'Council') initially provided some of the requested information but withheld the requested report (specifically a briefing note) in its entirety, citing Regulation 12(4)(e) of the EIR – the exception for internal communications.
2. During the course of the Commissioner's investigation, the Council carried out further searches and located photographs of the waste which it disclosed. The Council also disclosed a redacted version of the previously withheld briefing note, with information redacted under EIR Regulations 12(4)(e) and 12(5)(d) – the exception for the confidentiality of proceedings. Ultimately, the Council further revised its position. It now disclosed all the information previously withheld in the briefing note under the above EIR exceptions, such that it was no longer withholding any information. The Council explained that the remaining redactions were out of scope as they do not relate to the issue of waste. The complainant remained dissatisfied. He said he believed further information must be held and that the Council had failed to provide him with advice and assistance in accordance with its Regulation 9 of the EIR obligations.
3. The Commissioner's decision is that the request was correctly considered under the EIR. He is satisfied that the remaining redacted information within the disclosed briefing note is out of scope as it does not relate to the waste issue.

4. The Commissioner has investigated whether the Council holds further information within the scope of the request (Regulation 5 of the EIR (duty to make available environmental information on request)). The Commissioner's decision is that the Council does not hold further information within the scope of the request and therefore complied with Regulation 5(1) of the EIR. However, he finds that the Council did not comply with its obligation under Regulation 5(2) of the EIR at the time of the request as it did not locate and provide all relevant information within the statutory timeframe. However as information has now been provided, the Council is not required to take any steps. Lastly, the Commissioner finds that the Council complied with its EIR Regulation 9 advice and assistance obligations.

## **Background**

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5. The Commissioner understands that 2180 tonnes of waste generated from the Council's maintenance of open spaces across the district was allowed to build up at Dane Park Depot over several years.<sup>1</sup>
6. This far exceeds the 60 tonnes limit permitted by the Council's licence at this site. It cost £275,000 to remove this waste.

## **Request and response**

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7. On 25 February 2024, the complainant wrote to the Council and requested information in the following terms:

"On 25<sup>th</sup> January 2024 a report was presented to a meeting of the Council's Cabinet regarding the removal of waste from the Dane Park Depot. Please provide with me the following information relating to this report:-

- 1) A copy of the advice provided about the waste by the council's waste consultant (see Executive summary and paragraphs 1.6, 1.7 including any photographs or video evidence).
- 2) A copy of the report to the Corporate Management Team made by the Head of Coastal and Public Realm including and [sic] photographs or video evidence (see paragraph 1.8).

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<sup>1</sup><https://theisleofthanetnews.com/2024/01/19/councils-275k-bill-to-remove-2180-tonnes-waste-pile-from-dane-park-depot/>

- 3) A copy of all communications between the council and the Environment Agency regarding the waste at the depot including any photographs or video evidence (see paragraph 3.3).
  - 4) A copy of the Council's TR23 waste exemption certificate and any restrictions etc (see paragraph 1.3).
  - 5) A copy of the quote from Mears for the removal of the waste (paragraph 1.9) and a copy of the invoice (s) for the works carried out in relation to the waste removal by Mears.
  - 6) Any information held by the council about the composition of the removed waste e.g. toxicity or other dangers/ risks etc."
8. The Council responded on 18 March 2024. It provided the information for parts 1, 3, 4, 5 and 6 of the request but refused to provide the remainder (ie for part 2). The Council cited Regulation 12(4)(e), the EIR exception for the disclosure of internal communications, to withhold the requested report/briefing note at part 2 of the request in its entirety.
  9. The complainant requested an internal review on 29 March 2024 in which he challenged the Council's application of Regulation 12(4)(e) of the EIR. He also referenced a related request submitted on 18 March 2024 relating to photos or video of the waste in question and included a new EIR request (see 'Scope' section below).
  10. Following its internal review the Council wrote to the complainant on 1 May 2024 and upheld its original position in relation to its application of Regulation 12(4)(e) of the EIR for part 2 of the request. The Council also said it did not hold the requested photos or video footage in the complainant's associated request of 18 March 2024.

## **Scope of the case**

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11. The complainant contacted the Commissioner on 30 May 2024 to complain about the way his request for information had been handled..
12. The complainant did not submit any copies of the previous request referred to in paragraph 9 above as part of his complaint, but the Commissioner notes that photos and videos are referenced at part 3 of the request under consideration here. He further notes that the Council responded to both the current request and the associated request (of 18 March 2024) in its internal review outcome on 1 May 2024, and that the the complainant has complained about aspects of both responses (as set out in paragraph below).

13. The complainant submitted detailed grounds of complaint, including the chronology of his request. The Commissioner relayed the specific grounds of complaint to the Council, which included the complainant's view that the balance of the public interest in Regulation 12(4)(e) of the EIR favoured disclosure of the requested report at part 2 of his request quoted earlier. The complainant also argued that some photographic or video evidence of the waste must be held by the Council.
14. On 11 November 2024, during the course of the Commissioner's investigation, the Council revisited the request. The Council explained that the information it holds for part 2 of the request is not a "report" as requested by the complainant (ie a report to the Corporate Management Team ['CMT'] made by the Head of Coastal and Public Realm), but a briefing note. It disclosed the majority of this briefing note, with some redactions. In addition to relying on Regulation 12(4)(e) of the EIR for the redactions, the Council now said it wished to rely on Regulation 12(5)(d) – the EIR exception for the confidentiality of proceedings. For clarity, the Council advised that it had applied both exceptions to all the redactions in the briefing note. The Council also said it had widened its search parameters and had located some photographs of the waste, which it intended to disclose to the complainant.
15. At the Commissioner's request, the Council notified the complainant about the addition of the above exception, setting out its rationale on 18 November 2024. The Council also provided a number of photographs, explaining:

"We have considered your request for photographs and video evidence. It is true that there were no photographs or videos that went to CMT, or came from the consultant, or were communicated between the council and the Environmental Agency. However, we recognise in hindsight that our literal response only provided a snapshot of the matter.

No videos have been created. We hold an annotated image taken from Google Maps that shows the scale of the waste.

We widened our search parameters and have determined that some officers in the Waste and Recycling team held images. As this matter related to Open Spaces under another department head, it was reasonably supposed that the Waste and Recycling team would not be involved, given that the disposal had been contracted out and that the council no longer runs a commercial waste collection service.

We can also disclose that there is photographic imaginary [sic] already in the public domain, accessible here.”<sup>2</sup>

16. On 18 November 2024, the Commissioner sought the complainant’s view of the Council’s revised response.
17. The complainant said he was unable to provide his view within the requested timeframe due to personal circumstances. However, in the interim, the Council further revised its position on 3 December 2024. It now reissued the previously provided briefing note explaining to the complainant that:

“We have reconsidered your request and our final response is to provide you with an amended version of the previously disclosed redacted copy of the requested briefing note. You asked for a copy of the report to the Corporate Management Team made by the Head of Coastal and Public Realm including any photographs or video evidence. We have provided the photographic evidence. As advised, we do not hold a report but instead the enclosed briefing note.

We have redacted matters that are out of scope within this note as they do not relate to the theme of the removal of waste from the Dane Park Depot. We have now released all the information within the briefing note previously withheld under **Regulations 12(4)(e) and 12(5)(d)** of the EIR such that these exceptions are no longer being relied upon. This means that we have now provided you with all the information held in scope of your request. Please find this document attached.”

18. The Commissioner wrote to the complainant on 3 December 2024 asking him for his final view following the revised disclosure.
19. On 8 December 2024, the complainant submitted concerns relating to his view that further information in scope of his request must be held. He also contended that the Council had failed to comply with its Regulation 9 advice and assistance obligations.
20. The Commissioner sought the Council’s view of the complainant’s concerns prior to finalising his decision in this case. The Council provided the Commissioner with its view on 9 December 2024.

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<sup>2</sup>[https://www.google.com/maps/place/Dane+Park+Depot/@51.3847957,1.3905576,209m/data=!3m1!1e3!4m6!3m5!1s0x47d9531aaf7d6ff5:0x9164bfac91d7f4f!8m2!3d51.3848632!4d1.3909212!16s%2Fg%2F11rd\\_8p38j?entry=ttu&g\\_ep=EgoyMDI0MTEyOS4yIKXMDSoASAFQAw%3D%3D](https://www.google.com/maps/place/Dane+Park+Depot/@51.3847957,1.3905576,209m/data=!3m1!1e3!4m6!3m5!1s0x47d9531aaf7d6ff5:0x9164bfac91d7f4f!8m2!3d51.3848632!4d1.3909212!16s%2Fg%2F11rd_8p38j?entry=ttu&g_ep=EgoyMDI0MTEyOS4yIKXMDSoASAFQAw%3D%3D)

21. The Commissioner has reviewed the remaining redactions within the disclosed briefing note and deems them to be out of scope of the request as they are not related to the waste issue.
22. The Commissioner has considered whether the Council was correct to consider this request under the EIR. He has also determined whether the Council complied with its duty under Regulation 5 of the EIR. Lastly, the Commissioner has considered whether the Council has complied with its Regulation 9 of the EIR obligations.

## **Reasons for decision**

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### **Is the requested information environmental?**

23. 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).

24. The Council told the Commissioner:

'We have considered the request under the Environmental Information Regulations 2004 (EIR). The information requested is 'environmental information' as it meets the definition set out in regulation 2(1)(c) of the EIR. This covers "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 regulation 2(1)](a) and (b)" including water, soil, land and landscape "as well as measures or activities designed to protect those elements". As such it is to be considered for disclosure under the terms of the EIR rather than the Freedom of Information Act 2000.'

25. The Commissioner agrees with the Council's rationale. For procedural reasons, he has therefore assessed this case under the EIR.

26. The Commissioner will next consider whether the Council complied with its duty under Regulation 5 of the EIR.

**Regulation 5 – Duty to make available environmental information on request**

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

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

28. 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."

29. 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.

30. In other words, in order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any further information which falls within the scope of the request. 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.

31. The Commissioner will consider the complainant's evidence and arguments. He will also take into account the actions taken by the

Council to check that any further information is not held, and any other reasons offered by the Council to explain why no further information is held. The Commissioner will also consider any reason why it is inherently likely or unlikely that further information is not held.

### **The complainant's position**

32. Following the Council's provision of all the waste related information contained in the briefing note, the complainant submitted the following concerns, which he said were associated with part 6 of his request (and had come to light as a result of the latest disclosures):

'The last 2 tranches of disclosed information have revealed that:

**"it came to light that our "Waste and Recycling team were involved in this matter"** and held the requested photographs (TDC [the Council] email 18 November 2024 and that according to the CMT [Corporate Management Team] briefing note of 7 November 2023 disclosed to me by TDC via email on 3 December 2024 that

The open spaces team have confirmed that the waste is TDC generated. It is a mix of waste coming from other locations/services and green waste generated by the work of the open spaces team.

This suggests to me that the Waste and Recycling team and the Open Spaces team may still hold undisclosed information about the **about the [sic] composition of the removed waste.**

In fact the Open Spaces team were according to the disclosed CMT briefing note tasked with identifying the composition of the waste.

It is therefore within the scope of my request for the council to disclose any and all undisclosed information it may still may be holding about, for example, the nature of the waste discovered to have been coming from other locations/services and whether the dumping of this was authorized and by whom.'

33. He also said that the briefing note revealed that the waste issue had been discussed in a meeting on 17 October 2023, and argued that:

"... it is likely that information relating the CMT meeting of 17 October 2024 [sic 2023] would also be within the scope of my original information request, especially, but not exclusively, item 6 [of my request]".



## The Council's position

34. In relation to the initial searches undertaken to respond to the request, the Council said:

"The Head of Coastal and Public Realm and Director of Environment were asked by the Information Governance team if they held this information and they stated that they did not. As lead officers in this waste matter, these officers would have held photos and/or videos of the waste, if they existed. Whilst it is possible that any member of staff working at the Dane Park depot ("the depot") (and there are numerous), may have photographed/videoed the waste, it would be neither appropriate nor reasonable to search staff members' personal mobile phones when we have no belief that they would possess a video or photo of the information taken in a work capacity or that they would photograph or record the information at all. We would deem this information outside the scope of the Environmental Information Regulations."

35. The Commissioner disagreed with this stance and asked the Council to broaden its search parameters, which it subsequently did (see paragraphs 14 and 15 of this notice). This resulted in it locating the photographs provided to the complainant on 18 November 2024.
36. The Council told the Commissioner that any recorded information held would be still be held electronically and that no information had been deleted or destroyed.
37. The Council also said:

"Our computer systems are configured in such a way that files are stored in the cloud and both emails and Google Drive can be searched by the Data Protection Officer and key ICT officers. It would be against policy for staff to store information locally on personal computers.

However, as our laptops do not allow for accessing files off of digital cameras, mobile phones and USB memory sticks without the ICT security team and the Data Protection Officer authorising their use and computer settings been modified, it would be difficult for any alleged data to be copied from an external source onto a council laptop without using a third party email address, which would be against our computer acceptable use policy.

With the necessary ICT security steps required to create and share images and/or video recordings, it is highly likely that staff in connection with the waste at the depot would not have created an image or video as it would be complex in which to transfer the

data to their work computer. This would deter the creation of the requested information, particularly where imaginary [sic] exists in the public domain.”

38. Additionally, the Council explained that it does not have a specific records management policy (but does have a data minimisation policy) and that its policies do not specifically cover images or videos where there is no personal data captured. The Council said its data minimisation policy is clear that it will not retain any information longer than is necessary and that it will not create information unless it is required.
39. The Council said that the waste management issue was “an exceptional issue” and that there are no business purposes or statutory requirements upon the Council to retain the requested information.
40. In response to the complainant’s concerns, as set out above, the Council said:

“With regards to the following:

6 - Any information held by the council about the composition of the removed waste e.g. toxicity or other dangers/ risks etc

We have already stated to the Complaint that our consultant wrote:

that at least 1500m<sup>2</sup> (circa 2250t depending on material types) is at the site which consists of organics soils and stones/hardcore and potentially others which cannot be seen.

It has been confirmed that the waste pile also contained off cuts of metal and wood from work undertaken by other services, such as Minor Works, a small team within the Open Spaces department. This small team carry out maintenance and repairs throughout Thanet and this includes general small works e.g. fencing, brickwork, signage, repair of potholes in open spaces, benches etc. They are based at Dane Park depot and complement the work carried out by grounds maintenance staff. We do not hold this information in a recorded format as this was only provided verbally to the Head of Coastal and Public Realm.”

41. The Council disputed that it had any obligation to provide any information held relating to waste that was raised at the earlier meeting on 17 October 2023.

## **The Commissioner's conclusion**

42. The Commissioner is satisfied that the Council was under no obligation at this stage to provide previously unrequested information from an earlier meeting in response to the current request.
43. Based on the evidence made available to him, the Commissioner is satisfied that the Council has now carried out adequate searches, which would have located any information falling within the scope of the request.
44. Based on the searches undertaken and the other explanations provided, the Commissioner is satisfied that, on the balance of probabilities, the Council does not hold any further information falling within the scope of the request.
45. It follows that the Commissioner finds that the Council has complied with Regulation 5(1) of the EIR.

## **Procedural matters**

46. Given that the Council located further information in scope of the request (the photographs) and that it disclosed all the information in scope in the previously withheld briefing note outside the 20 working days' time limit, the Commissioner has recorded a breach of Regulation 5(2) of the EIR.

## **Regulation 9 – advice and assistance**

47. Regulation 9(1) of the EIR requires public authorities to provide advice and assistance to requestors, so far as it would be reasonable to expect the authority to do so.
48. As stated in the Commissioner's guidance<sup>3</sup>, the duty to provide advice and assistance can be triggered if a public authority is aware, at the time of the request, that the applicant may actually be seeking other information, beyond what they have asked for in the request.
49. The guidance states:

“In this situation, you should respond by providing the information the applicant has requested. However, if your examination of the request shows that the applicant is clearly seeking other information and what this is, you should also

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<sup>3</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/regulation-9-advice-and-assistance/>

advise and assist them with a view to enabling them to make another request.”

50. In his final submissions to the Commissioner on 8 December 2024, the complainant argued:

The briefing note also reveals that prior to its meeting of 7 November 2023 the CMT also discussed the waste in question at its meeting of 17 October 2023.

Regulation 9 EIR places a duty upon the council to assist the information requestor. ICO guidance suggests that this duty should be interpreted broadly.

It would therefore be reasonable to assume that because my request focused in upon the CMT meeting of 7<sup>th</sup> November 2024, when it became apparent via the disclosed briefing note that the same matter had been discussed by the CMT on 17 October 2024, that the council should have also released to me the relevant documents related to this meeting. They did not and are therefore in breach of Regulation 9 EIR.”

51. The Council argued:

“We disagree that Regulation 9(1) requires us to disclose any information relating to a meeting dated 17 October 2023 and that would be outside the scope of this request for information. Whilst we recognise that Regulation 9(1) requires the Council to provide advice and assistance about requests for environmental information, we would not believe it reasonable to suggest to the applicant this additional information in this case.

We recognise the duty to provide advice and assistance can also be triggered if the council was aware – at the time of the request – that the requestor may actually be seeking other information, beyond what they have asked for in the request.

Given that the meeting in question pre-dated the meeting of the 7 November 2023, matters discussed in the latter meeting would supersede the earlier meeting. Also, given the fast pace of the matter of the waste removal, the most recent meeting would be the most relevant to this case as it would provide the most up-to-date information.

It is therefore our view that we are not obliged to provide information related to the meeting of 17 October 2023.”

52. The Commissioner is satisfied with the Council’s approach in this case.

53. The Commissioner's decision is that the Council has complied with its obligations under Regulation 9(1) of the EIR to offer advice and assistance.

## **Right of appeal**

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54. 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)

55. 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.
56. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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