

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

**Decision notice**

**Date:** 13 November 2014

**Public Authority:** Norfolk County Council  
**Address:** County Hall  
Martineau Lane  
Norwich  
NR1 2DH

**Decision (including any steps ordered)**

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1. The complainant has requested information relating to the initial approval of a planning application for a school from 1985. The council was the planning authority however it states that it does not hold a copy of the information. It suggests that South Norfolk District Council might hold the information as it is responsible for maintaining the planning register. The complainant has however asked the district council which said that it does not hold the information. It referred him back to the county council. The complainant believes that the county council may hold the information but does not want to disclose it to him. He considers that further extensions which have been built onto the school might breach planning conditions which were set on the approval notice for the initial application.
2. The Commissioner's decision is that on a balance of probabilities the council does not hold the information which the complainant has requested.
3. The Commissioner does not require the authority to take any steps.

**Request and response**

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4. On 27 May 2014, the complainant wrote to the council and requested the following information:

*"Under the freedom of information act. I require the original and any subsequent planning consent for:*

*The Dickleburgh primary school.  
Harvey lane.  
Dickleburgh.  
Diss.  
Norfolk.  
IP21 4NL"*

5. The council responded on 18 June 2014. It said that it had not been able to find any information falling within the scope of the request, but did provide the complainant with the details of other planning applications which followed this to him.
6. The complainant wrote back to the council on 18 June 2014. He said that he was dissatisfied with the council's response.
7. On 30 July 2014 the council provided the outcome of its internal review. It said that its response was lacking in that it should have clarified to the complainant that the information he was seeking was likely to be held by South Norfolk District Council. It is responsible for maintaining the Public Planning Register for the area. It reconfirmed however that the county council does not hold the information he had requested. It said that whilst county council does now retain such records it does not hold the records of historical applications.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 16 July 2014, initially to complain about the council's first response and that it had failed to respond to his request for internal review. The council did subsequently respond to the review request, and the complainant now wished the Commissioner to consider the council's response that it does not hold the information.
9. The Commissioner considers therefore that the complaint is that further information must be held by the council.

## Reasons for decision

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### Regulation 12(4)(a)

10. Regulation 12(4)(a) of the EIR states that a public authority may refuse to disclose information to the extent that it does not hold any relevant information falling within the scope of the request.
11. When the Commissioner receives a complaint that a public authority has not provided any or all of the requested information, it is seldom possible to prove absolutely that there is no further information held. The Commissioner will apply the normal civil standard of proof in determining the case, i.e. he will decide on the balance of probabilities whether the information is held. In applying this test the Commissioner will consider:
  - the scope, quality, thoroughness and results of the searches; and, or
  - other explanations offered as to why the information is not held.
12. Where the question is whether the council holds information or not the Tribunal has in the past outlined that where its searches are adequate the decision must be that the information is not held on a balance of probabilities. Even if further information might be held the Tribunal does not expect that an authority will search every scrap of paper held by an authority in order to determine whether further information is held or not. It expects that the authority will have carried out appropriate searches of the relevant areas to determine whether information can be found or not.
13. The Commissioner makes his decision as to whether the council holds information or not based upon a judgement as to whether the searches which the authority has carried out are appropriate to identify whether information is held or not. He will also take into account any other factors which might lead him to consider that information is held but has not been found by an authority.
14. In this case the Commissioner asked the council to provide him with details of the searches which it had carried out to identify whether it held any information falling within the scope of the complainant's request.
15. The council firstly clarified that although it was the planning authority for the relevant planning application it is not under a statutory duty to retain such information. The Public Planning Register is a register which should contain information of the sort requested by the complainant. It

said that the statutory requirement to retain the Planning Register is determined by the Town and Country Planning (Development Management Procedure) (England) Order 2010. In Norfolk this rests with the District Authorities, (and The Broads Authority). In the case of this application the statutory duty to hold the information rests with South Norfolk District Council.

16. The council clarified that information relating to older applications is held in manual files, whilst newer applications are held in electronic files. The information in manual files is held in a filing system arranged by reference to a site, in this case for instance the site would be held under a file "Dickleburgh County Primary School." Prior to 2006 the files were arranged in date order rather than grouped by site reference, however in 2006 these were rearranged into groups by site, district, and in date order. Thus records about particular sites and from particular dates should be easily located. In this case there was no information held for the initial planning application.
17. The council also confirmed that it had carried out electronic searches for the information, using the search term "Dickleburgh County Primary School" but that this had not found any relevant information from the initial planning application. It had however found other applications relating to the site which it has passed on to the complainant or which is available on the planning portal of its website. In the case of one withdrawn application the council agreed to provide a copy of this to the complainant (and did so) as this was held in paper form only, although it was available to inspect from council offices.
18. The council confirmed that it would have held the application documents at the time of the application and that these would have been held in paper form within its manual filing system. It said that the current officer responsible for the section took responsibility in or around 2006. No documents have been destroyed since that point however the relevant application from 1985 had not been found. The council confirmed therefore that whilst it holds no record of the documents destruction it does not hold the relevant application documents. It presumes therefore that these were destroyed at some point between 1985 and 2006 but cannot provide documentary evidence that that is the case.
19. Finally the council also confirmed that no other council department would hold this information and that it would not be held in electronic form on officer's computers etc. The file would have been a paper file, and the relevant department which should hold the documents had been searched without success.

## Conclusions

20. Having considered the council's responses to the Commissioner's questions the Commissioner is satisfied that on a balance of probabilities no information is held by the council falling within the scope of his request. Clearly this is a case where information was once held but over the long period of time this has subsequently been either destroyed or lost without a record of that taking place.
21. The council is not under a duty to hold the information beyond the period of the application. Its records management procedures currently state that information of this sort will be held for a period of 15 years, although it confirmed in reality that it holds on to this information indefinitely to enable consistency in planning decisions and for quality assurance purposes. It said for instance that this allows it to build up a bank of information regarding each specific site, which can inform future planning applications.
22. The Commissioner notes that as there is no statutory duty to hold the information beyond the period of the application, and as the application was made in 1985 there is a strong likelihood that a record of the destruction of the documents may not have occurred. The relevant document is now 29 years old and over that period of time the records management procedures of council are likely to have improved considerably. The Act was not brought into power until 2000 and its full effects were not brought in until 2005. The EIR were also not brought into power until 2005. As a result of these records management procedures have been tightened by authorities, however documents which had been held for some time prior to this may well have been destroyed without a record of that being made.
23. The Commissioner is therefore satisfied that on a balance of probabilities the council does not hold the relevant information.

## The public interest

24. All the exceptions under the EIR are subject to the public interest test, including regulation 12(4)(a). However, the Commissioner can see no practical value in applying the test where information is not held and he does not expect public authorities to do so.

## **Right of appeal**

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25. 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: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

26. 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.
27. 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 .....**

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**