

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 7 January 2016

Public Authority: Devon County Council
Address: County Hall
Exeter
Devon
EX2 4QD

Decision (including any steps ordered)

1. The complainant has made a request to Devon County Council ("the council") for information about an environmental impact assessment for a specified property and adjoining land. The council disclosed information in response, but the complainant contested that further relevant information was held.
2. The Commissioner's decision is that all relevant held information has been disclosed. However the council breached regulation 5(2) by failing to provide a response to the information request within 20 working days.
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 6 May 2015 the complainant requested the following within a piece of correspondence that was copied to the council and additional third parties:

"...any and all documentation and policy with regard to [redacted property name] holding and influences to adjoining SSSI land of any relevance to EIA 1348 held or known..."
5. The council responded on 24 June 2015 and disclosed information.
6. The complainant requested an internal review on 29 June 2015.

7. The council provided the outcome of its internal review on 24 July 2015. It disclosed further held information that had been identified.

Scope of the case

8. The complainant contacted the Commissioner on 18 June 2015 to complain that he had not received a response from the council. Upon the council providing a response and internal review, the complainant contested that the council's disclosure was incomplete.
9. During the Commissioner's investigation the council identified further relevant held information, which it disclosed to the complainant on 4 December 2015.
10. The Commissioner therefore considers the scope of this case is the determination of whether the council is likely, on the balance of probabilities, to hold further information relevant to the request.

Reasons for decision

Is the information environmental?

11. Information is "environmental" if it meets the definition set out in regulation 2 of the EIR. Environmental information must be considered for disclosure under the terms of the EIR. Under regulation 2(1)(c), any measures that will affect, or be likely to affect, the state of the elements referred to in 2(1)(a), will be environmental information. The requested information relates to an area of land that was subject to an environmental impact assessment. The Commissioner therefore considers that the request should be dealt with under the terms of the EIR.

Regulation 5(1) – Duty to make information available on request

12. Regulation 5(1) states that any person making a request for information is entitled to have that information communicated to them. This is subject to any exceptions that may apply.

The Commissioner's investigation

13. On 10 August 2015 the Commissioner wrote to the council to request information about the searches it had undertaken in respect of the complainant's request, as well as any associated information that it considered relevant to the Commissioner's decision.

14. The council has advised that it's involvement with the environmental impact assessment that the request relates to has been exclusively through its Historic Environment Team ("the HET") and the North Devon AONB Service ("the AONB Service")
15. The council considers that all relevant information held by the HET would be contained in a shared electronic casework file that is held on the council's network. This file includes both scanned copies of hardcopy documents and direct copies of electronic documents. All of this information was disclosed as part of the council's response to the request, with the exception of redacted third party personal data. Further searches of emails and other electronic records by the HET and the wider Environmental Service have also since been undertaken using the name of the property, "EIA", and the third parties to which the complainant's request was copied to. The information retrieved from these searches was found to be largely duplicated within the casework file already disclosed, but a small number of further relevant emails were identified and disclosed at internal review stage. Due to the above, the council does not reasonably expect that further information is likely to be held within the HET.
16. The council has also confirmed that all information held by the AONB Service would be in the form of emails, and that staff in this team have undertaken keyword searches to retrieve all relevant correspondence held in Microsoft Outlook, on personal network drives, and in all electronic AONB Service folders on the council's network. The search terms included the property name, "EIA" and the third parties to which the request was copied; and the relevant retrieved information was disclosed. However the council has confirmed that the AONB has since identified further documents which it considers would fall within the scope of the request, and after some delay these were disclosed during the Commissioner's investigation on 4 December 2015.
17. The council is not aware of any relevant information being held in the past but since destroyed, and considers that the content of correspondence identified does not suggest that any parts are missing. However the council does acknowledge that the previous AONB Service manager may potentially have held some email correspondence, but this would have been lost following the deletion of the individual's email account and personal drive, and it is now impossible for the council to confirm if any relevant information was lost at this time.

Conclusion

18. In reaching a conclusion on this matter, the Commissioner has needed to consider, on the balance of probabilities, whether the council is likely to hold further information sought by the complainant's request.

19. In reaching this decision, the Commissioner has considered the submissions of both the complainant and council in detail.
20. The complainant has advised the Commissioner that he considers there to be 'gaps' in the information disclosed, and that correspondence between named individuals is missing. The Commissioner has also noted that the complainant specifies (in a submission received at the conclusion of the investigation) that his request was for "*any/all information related to*" the property and adjoining land.
21. However there is no definitive evidence to suggest to the Commissioner that further recorded information must be currently held by the council. The council has provided a clear and rational description of its searches across the HET and AONB Service that were involved in the matter of EIA 1348, and having considered the specific nature of the subject matter and the centralised way that related information is held, there is no suggestion that these searches have been deficient.
22. It is also apparent from the wording of the original request that it was couched specifically in relation to EIA 1348, and the council has undertaken its searches in accordance with this scope. Whilst it has emerged that the complainant may have expected other information to be disclosed, this decision must consider the request as it was made and subsequently referred to the Commissioner.
23. On this basis, and in the absence of any conflicting evidence, the Commissioner has concluded that no further recorded information is likely to be held.

Regulation 5(2) – Time for compliance

24. Regulation 5(2) states:

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 request.

25. The council did not provide its response to the complainants request until after 20 working days following the date of receipt, and therefore breached regulation 5(2).

Right of appeal

26. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

27. 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.
28. 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
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