

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

Date: 22 November 2018

Public Authority: Hertfordshire County Council
Address: County Hall
Pegs Lane
Hertford
Hertfordshire
SG13 8DE

Decision (including any steps ordered)

1. The complainants have requested information on the design, siting, access arrangements and management of a traveller site in their local area. The council disclosed information but the complainants argued that further information was held by the council. During the course of the Commissioner's investigation further information was disclosed to the complainants (subject to redactions under Regulation 13(1)). The complainants, however, are unhappy that the council did not provide the information within the time period stipulated in Regulation 5(2) of the Act (20 working days).
2. The Commissioner's decision is that the council has failed to comply with Regulation 5(2) in that it failed to provide the information within the required period. She has though decided that on a balance of probabilities the council has now provided the information it holds to the complainants.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 18 February 2018, the complainants wrote to the council and requested information in the following terms:

"Please supply information/correspondence pertaining to the design, siting, access arrangements and management of the Traveller site in the area known as LA3 Dacorum."
5. The council responded on 26 March 2018. It provided some information however the complainants wrote back to the council on 28 March 2018 stating that it appeared that only some council departments appeared to have been searched for relevant information.
6. The council responded to the complainants on 28 April 2018 and confirmed that its response had been incomplete. The council confirmed that further information was held and not been provided to the complainant in the original response. The letter stated that the relevant departments would be asked to respond again to the complainants' request.
7. On 30 May 2018 further information was provided to the complainants by the council. The complainants argued that this information was still incomplete and further information must be held by the council falling within the scope of the request.
8. Following an internal review the council wrote to the complainants on 25 June 2018. It said that it now considered that it had disclosed all of the information which it holds falling within the scope of the request.

Scope of the case

9. The complainants contacted the Commissioner on 7 June 2018 to complain about the way their request for information had been handled.
10. During the course of the Commissioner's investigation the council searched for, and disclosed further information to the complainants in October 2018.
11. It said that after carrying out these further searches it was confident that all of the information falling within the scope of the request had now been disclosed. The Commissioner therefore asked the complainants whether they were now satisfied with the council's responses.

12. The complainants responded on 7 November 2018 stating that they felt that as the council had provided the information in a piecemeal fashion, they found it hard to be confident that all relevant information had now been disclosed, as such, the Commissioner has chosen to investigate whether or not more material is likely to be held.
13. The complainants also expressed continuing concerns about the procedures undertaken by the council in responding to the request. They said that *"Had the planning application already been submitted by the developers the information would have been received well after the consultation period. This would have totally negated the purpose of the Freedom of Information Act in relation to the planning application"*.
14. The complainants did not complain about the redaction of personal data under Regulation 13(1) and so this has not been considered further in this Decision notice.
15. The Commissioner therefore considers that the complaint is whether further information is held and if the council met the time requirements of the Regulations in responding to the requests.

Reasons for decision

Regulation 5(2)

16. Regulation 5(2) of the EIR provides that on response to information requests under the EIR, information shall be made available as soon as possible and no later than 20 working days after the date of receipt of the request.
17. The complainants made their request for information on 7 June 2018.
18. The council did not fully provide all of the information falling within the scope of the request until October 2018, however the Commissioner does not know the exact date that the council provided this information to the requestors.
19. Nevertheless this period falls significantly outside of the 20 working days required by Regulation 5(2).
20. The Commissioner has therefore decided that the council failed to comply with the requirements of Regulation 5(2) in its response to the complainants' request for information.

Is any further information held?

21. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainants' evidence and argument. She will also consider the actions taken by the authority to check that the information is not held, and any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is not held.
22. The Commissioner is mindful of the Tribunal's decision in *Bromley v the Information Commissioner and the Environment Agency* (EA/2006/0072) in which it was stated that "*there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records*". It clarified that the test to be applied as to whether or not information is held was not certainty but the balance of probabilities. This is therefore the test the Commissioner applies in this case.
23. In discussing the application of the balance of probabilities test, the Tribunal stated that, "*We think that its application requires us to consider a number of factors including the quality of the public authority's initial analysis of the request, the scope of the search that it decided to make on the basis of that analysis and the rigour and efficiency with which the search was then conducted. Other matters may affect our assessment at each stage, including for example, the discovery of materials elsewhere whose existence or content point to the existence of further information within the public authority which had not been brought to light. Our task is to decide, on the basis of our review of all of these factors, whether the public authority is likely to be holding relevant information beyond that which has already been disclosed.*" The Commissioner has therefore taken the above factors into account in determining whether or not further information is held on the balance of probabilities.
24. In coming to a decision in this case the Commissioner has considered the supporting evidence which was provided to him by the complainants in support of their submission that further information may be held.
25. On 3 October 2018, as part of her investigation the Commissioner asked the council a number of questions to determine what information it holds falling within the scope of the complainants' request.
26. The council responded on 26 October 2018. Rather than answering the questions specifically it explained what actions it had now taken to

establish whether further information might be held, and what further information was in fact held by it.

27. It confirmed that it did not consider that it would hold a great deal of information as the relevant planning authority for the site is Dacorum Borough Council, not the county council.
28. It clarified that in response to the initial review, the following teams had been contacted:

Gypsy and Traveller Section
Highways Department
School Planning Department
Access to Education for Travellers and Refugees (Children's Services)

29. It said that each department had been contacted again and asked to carry out a further searches of their email, electronic and hard copy document repositories concerning the site.
30. It explained that it had also checked the planning portal of Dacorum Council, the local planning authority for applications of this sort, and had established that a number of other county council teams had been in contact with Dacorum Council in relation to the site.
31. It then carried out similar searches of the records held by the Passenger Transport Team and the Environmental Resource Planning Department (which includes the Sustainable Drainage (SUD's) and Flood Risk Team and Hertfordshire Ecology team). It said that it also contacted the Children's Services Director and requested that they carry out searches of their records.
32. It said that in response, the only new information it had located was held by its Access to Education for Travellers and Refugee's Team, its Children's Services Director and its Local Ecology Team.
33. It said that where information was located this was then provided to the complainants in its disclosure of October 2018 (subject to redactions under Regulation 13(1)).
34. It said that although it considered that some of the information which it had located did not strictly fall within the scope of the request, it had disclosed this to the complainants in order to be transparent.

Conclusions

35. In coming to her conclusion, the Commissioner has considered what information she would expect the council to hold and whether there is any evidence that the information was ever held. In doing so the

Commissioner has taken into account the responses provided by the council to the questions posed by her during the course of her investigation. The Commissioner is also mindful of the Tribunal decision in the decision in the *Bromley* case highlighted above.

36. The council has now carried out relevant searches, within all of the relevant departments, of its manual and electronic files as well as its email systems. It has also clarified that it is not the relevant planning authority for the site, which would reduce the amount of information it would otherwise be expected to hold.
37. Given the history of this case the Commissioner appreciates that the complainants may remain sceptical that further information is not held. Whilst they had said that they would work under the assumption that it had all now been provided the Commissioner has outlined the searches which the council carried out in response to her inquiries to provide a level of surety to them that the council has now addressed their complaint appropriately and that they have now received the information which the council holds.
38. Under the circumstances described, following the council's disclosure of further information during the course of the Commissioner's investigation, the Commissioner does not consider that there is any evidence that undermines the council's position that it has now provided all of the information relevant to this request.
39. Taking all of the above into account the Commissioner is satisfied that on the balance of probabilities, no further information is held by the council.

Other matters

40. The Commissioner notes that the council failed to comply with the requirements of Regulation 5(2) in responding to the request, and this has specifically raised the complainants level of distrust over the councils overall response.
41. She further notes that the piecemeal response took well over the time period prescribed before all of the information was disclosed, and notes the complainants' view that this could have significantly impacted upon their ability to submit comments during the consultation period for the planning decision if a planning application had been submitted.

42. The Commissioner considers that the council's delayed response in this case could have seriously undermined one of the central purposes of the Regulations; to encourage and enable informed public participation on matters which affect the environment.
43. Following the final disclosure to the complainants, the council wrote to the Commissioner recognising that its response to this request had not been adequate. It therefore said that it would revert back to the relevant departments and to relevant officers and reiterate the importance of disclosing information in response to information access requests.
44. The Commissioner reminds the council that she monitors public authority's delays in responding to requests. Where she considers that a council is failing to comply with the time requirements of the Regulations or the FOI Act on a consistent basis she is able to take action, separate from individual complaints received by her, to ensure that public authorities comply with their obligations.

Right of appeal

45. 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

46. 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.
47. 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