

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 20 December 2018

**Public Authority:** Newcastle-u-Lyme Borough Council

**Address:** Civic Offices  
Merrial Street  
Newcastle  
Staffordshire  
ST5 2AG

#### **Decision (including any steps ordered)**

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1. The complainant has requested information about noise recordings made by the council at his home. The council provided the information however the complainant believes that further information must be held. Further to this he argues that the council provided the information to him in a different format to that which he requested it and so it failed to comply with Regulation 6. He also argued that the council failed to provide help and assistance as required by Regulation 9.
2. The Commissioner's decision is that on a balance of probabilities the council has provided the information it holds to the complainant. She has also decided that the council's response met with its obligations under Regulation 6 and Regulation 9.
3. The Commissioner does not require the council to take any steps.

## Request and response

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4. On 28 January 2018, the complainant wrote to the council and requested information in the following terms:

*"Would you please send me via email the following information.*

*A summary of the noise recordings made at [address redacted], on 15th October 2016 and 18th November 2016.*

*I also would request details of the recordings made on 16th September 2016 at the junction of [road name redacted] and [road name redacted], and the recordings made at the junction of [road name redacted] and [road name redacted] on the same date.*

*Please supply this information in an open reusable format (Microsoft Word for example) but if this is not possible in a hard copy."*

5. The council responded on 14 February 2018. It provided the complainant with a DVD containing
- a) Recordings NME deployment of 14.10.16 (folder containing wav files)
  - b) Recordings of NME deployment of 18.11.16 (folder containing wav files)
  - c) Recordings of visit 16.09.16 Pt1 (folder containing wav files)
  - d) Recordings of visit 16.09.16 Pt2 (folder containing wav files)
  - e) Logged Noise Measurement Data 14.10.16 (excel)
  - f) Logged Noise Measurement Data 18.11.16 (excel)
  - g) Logged noise measurement data pt1 of 16.09.16 (excel)
  - h) Logged Noise Measurement Data Pt2 of 16.09.16 (excel)
  - i) Notebook visit with summary of visit 16.09.16 (pdf)
  - j) Summary of recordings of NME Deployment 14.10.16 (pdf)
  - k) Summary of recordings of NME deployment of 18.11.16 (pdf)
6. The council said that the DVD also included written summaries for items j-k.
7. Following an internal review the council wrote to the complainant on 30 April 2018. It upheld its initial decision that the information it holds had all been provided to the complainant.
8. It pointed out to the complainant that it had previously provided some of this information to the complainant on 21 February 2017 and described this information to the complainant. It further highlighted that it had provided a link to the recording software of the recording

equipment's manufacturer which would allow the files to be heard, but the complainant had said to the council that he was unable to access the data in this manner.

## Scope of the case

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9. The complainant contacted the Commissioner on 19 June 2018 to complain about the way his request for information had been handled.
10. He argues that the information requested has not been supplied appropriately for the following reasons.
  - 1 The reply was sent by post and not by email as requested.
  - 2 The information was not supplied in the format requested.
  - 3 The information supplied was not complete.
11. In his complaint letter to the Complainant also stated his grounds of complaint included:
  - The DVD only contained 8 files rather than the 11 stipulated in the review response.
  - The recordings which were provided amounted in total to a recording time of 38 Minutes and 9 seconds, however the recordings made in his property during October and November 2016 lasted for six hours.
  - No advice or assistance was provided.
12. The Commissioner considers that the complaint is therefore as set out above.

## Reasons for decision

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Has all of the information been provided to the complainant?

13. Section 5(1) of the EIR states that

*"Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request."*
14. The complainant argues that the DVD provided to him by the council does not include all of the information which the council says it does.

15. He said that the council indicated that the DVD contains 11 files within it, however the copy he was provided with only holds 8 files.
16. He also argues that the duration of the recordings sent to him is 38 minutes and 9 seconds, however the recordings made on his property during October and November 2016 lasted for six hours.
17. The Commissioner asked the council to confirm details of the DVD which was provided to the complainant, and specifically that the information provided to him was complete. The council confirmed that the DVD it sent to the complainant did contain 11 files, and that, for the avoidance of doubt, a further copy of the DVD was provided to the complainant on 25 July 2018 which had been specifically checked to confirm that all of the relevant files were included. The contents of the DVD was checked by the Customer Relations Officer to confirm that it contained all of the relevant files.
18. In the covering letter sent by the council providing the DVD on 25 July 2018 the council officer stated to the complainant that *"I have asked for a copy of the disc provided along with the contents list. I have loaded the disc myself and can confirm that there are 11 files on the disc that match the contents provided. I have enclosed another copy of the disk and contents list for your use."*
19. The council said that the DVD included:
  - a. 3x PDF of officer notebook entries and sound analysis reports.
  - b. 4 x Excel spreadsheets containing raw measurement data and parameters captured by the sound level meters deployed during the noise complaint investigation. This information is outputted from BZ5503 Measurement Partner Suite software supplied by the manufacturers of the sound level meters, Bruel and Kjaer
  - c. 4 x folders containing WAV files
20. The council provided screenshots of the relevant DVD files to the Commissioner confirming the contents of the DVD. The Commissioner accepts that the evidence demonstrates that the DVD contains 11 files as described above.
21. The Commissioner notes that the PDF files have a different date for the last date of modification. This is shortly prior to the DVD being posted to the complainant in July. The 'last modified' date for these files falls after the DVD was initially provided to the complainant, and therefore this does not directly provide evidence that the DVD which was sent in February 2018 included these files. Nevertheless this is prior to the DVD being re-issued to the complainant on 25 July 2018, and so the

Commissioner considers that this information has now been provided to the complainant.

Is any further information held?

22. The complainant argues that the council's recordings were 6 hours long. The DVD however only contains recordings totalling 38 minutes. The complainant therefore argues that he has not received all of the relevant recordings falling within the scope of his request.
23. In the covering letter of 25 July 2018 the council confirmed to the complainant that *"The equipment installed on 16<sup>th</sup> October 2016 and 19<sup>th</sup> November 2016 measured noise levels at the times indicated on the graphs. Sound recordings have been made during the areas with solid colouring on the bar at the top of the graph. This totals 38 minutes and 9 seconds"*.
24. The complainant however argues that the 'solid colourings' actually evidence recordings of 6 hours. He argues that: *"The summary of the NME deployment for 14/10/16 confirm 3 hours of recording. The document relating to the second deployment also confirm recordings of 3 hours duration."* He also argues that 6 hours of recording match his own diary records.
25. Whilst the Commissioner cannot judge whether the council or the complainant is correct in their respective arguments as to whether the council's recordings should have last for 6 hours or 38 minutes, she is able to investigate whether, on a balance of probabilities, all of the information which the council holds falling within the scope of the request has been provided to the complainant. In establishing this, the complainant may be able to satisfy himself that he is mistaken in his view that the recording should total 6 hours.
26. The Commissioner wrote to the council on 4th October 2018 and asked it a series of questions regarding the searches it had carried out to locate any information falling within the scope of the request.
27. She asked the council to confirm:
  - a. *What searches have been carried out to check no information was held within the scope of the request and why would these searches have been likely to retrieve any relevant information?*
  - b. *Please describe thoroughly any searches of relevant paper/electronic records and include details of any staff consultations.*

- c. If searches included electronic data, which search terms were used and please explain whether the search included information held locally on personal computers used by key officials (including laptop computers) and on networked resources and emails.*
  - d. If no or inadequate searches were done at the time, please rectify this now and let me know what you have done*
  - e. If the information were held would it be held as manual or electronic records?*
  - f. Was any recorded information ever held relevant to the scope of the complainant's request but deleted/destroyed?*
  - g. If recorded information was held but is no longer held, when did the council cease to retain this information?*
  - h. Does the council have a record of the document's destruction?*
  - i. What does the council's formal records management policy say about the retention and deletion of records of this type? If there is no relevant policy, can the council describe the way in which it has handled comparable records of a similar age?*
  - j. If the information is electronic data which has been deleted, might copies have been made and held in other locations?*
  - k. Is there a business purpose for which the requested information should be held? If so what is this purpose?*
  - l. Are there any statutory requirements upon the council to retain the requested information?*
28. The council said that the files are held electronically. Sound files (.wav) and measurement files (excel) are downloaded onto a secure area on the councils server using 'BZ5503 measurement partnership suite', which is proprietary software provided to it for the purpose. It said that this is standard practice for all noise measurement and sound recordings on council sound level meters. The original flash memory cards on which the initial recordings are recorded are then retained and reused by the council. The Commissioner presumes that by this the council means that they are used again and the contents are deleted and the files overwritten.

29. The council confirmed that once these files have been downloaded onto its secure server they cannot be altered and cannot be deleted without authorisation from the Environmental Protection Team Manager. It confirmed that copies of these files were provided to the complainant on the DVD.
30. PDF files are created from word documents stored within the council's 'Information at Work' system; its electronic document management system. It said that once a document is exported into its system any alterations to the original results in the creation of a new document so there is always a copy of the original document retained.
31. It said that the lead case officer involved in the investigation carried out the searches to locate the information, and this was then verified by the Environmental Team Manager to ensure that all relevant information falling within the scope of the request was identified before being disclosed to the complainant.
32. The team uses a case management system, (Civica APP), where all cases are given a unique reference number. The noise files are not stored within the APP but on a separate server as noted above. APP is linked to the other case management system so the systems only hold one copy of the document.
33. The Council therefore considers that appropriate searches of its systems were conducted in order to locate, retrieve and supply the requested information to the complainant.
34. The council confirmed that the original BZ5503 files for 14 October 2016 and 18 November 2016 were deleted, however all the data contained within the original files is retained in the systems outlined above and copies of these were disclosed to the complainant on the DVD. The Environmental Team Manager and IT services hold a log of noise file retentions and deletions and the original BZ5503 file was deleted on 7 June 2018.
35. It provided the Commissioner with a copy of the relevant section of its retention and deletion policy, published on its website at <https://www.newcastle-staffs.gov.uk/sites/default/files/IMCE/YourCouncil/GDPR/R%26D%20Schedule2305.pdf>, which states that such files are retained for 6 years from creation under the Limitation Act 1980 s.2.
36. The Commissioner notes therefore that although the original files were deleted, the council holds a copy of these, and these were disclosed to the complainant in response to his request for information.



37. The council also said that:

*"[The complainant] was made aware at the time that the equipment was being installed that it would measure for the duration of the time it was installed but any noise events /sound recordings would only be recorded either by himself or his partner activating a trigger switch, in which case a maximum of ten minutes would be recorded at any one time unless the trigger was pressed again to stop the recording beforehand".*

The Commissioner understands the council's argument in this respect to be that the duration of the recordings is 38 minutes and that the complainant is mistaken in his belief that over 6 hours of recordings were made.

38. The complainant admits himself that he does not have the necessary experience with computers which would aid him with this, and complained that the council should have provided further assistance to him to allow him to access the information. He suggested a format to disclose the information in which would be more understandable to him. This is considered further below.

### Conclusions

39. 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.

40. 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.

41. 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.

42. In coming to a decision in this case the Commissioner has considered the supporting evidence which was provided to him by the complainant in support of his submission that further information may be held.
43. 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.
44. The council has carried out relevant searches, within all of its relevant case management systems, and of its electronic files. Its record's system is such that any information falling within the scope of the complainant's request would be filed onto the relevant case managements systems, and these have been searched and the information has been provided to the complainant.
45. Where information has been deleted, this was first copied onto its case management system, and there are relevant policies to prevent the accidental deletion or alteration of information.
46. Furthermore, after receiving the complaint from the complainant the council took the step of verifying that all information had been disclosed, and providing the complainant with a further copy of the DVD. The searches which were carried out were also verified by the Environmental Team Manager.
47. The Commissioner also notes that the council has confirmed to both the Commissioner and the complainant that the length of the recordings totals 38 minutes, not the six hours which the complainant suggests was recorded. It has also provided the complainant with specific times for each recording, and provided an explanation (for the technical reasons as described at paragraph 37) as to why the recording times are shorter than the complainant considers to be the case.

48. Under the circumstances described 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. Whilst the complainant argues that the information provided by the council, as well as his own diary records, demonstrate recordings totalling 6 hours; the council has not been able to locate any further recordings or files which would demonstrate this to be the case. In the Commissioner's view, the discrepancy identified by the complainant is likely to be a result of the way in which the recording equipment was used, meaning that less was actually recorded than was assumed.
49. Taking all of the above into account the Commissioner is satisfied that on a balance of probabilities, no further information is held by the council falling within the scope of the request.

The form and format of the information

50. Section 6(1) of the EIR states that:

*"Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless –*

- a) it is reasonable for it to make the information available in another form or format; or*
- b) the information is already publicly available and easily accessible to the applicant in another form or format."*

51. Regulation 6(2) states that

*"If the information is not made available in the form or format requested, the public authority shall –*

- a) explain the reason for its decision as soon as possible and not later than 20 working days after the date of receipt of the request for the information;*
- b) provide the explanation in writing if the applicant requests; and*  
*(c) inform the applicant of the provisions of regulation 11 and the enforcement and appeal provisions of the Act applied by regulation 18."*

52. In his request for information the complainant requested that:

*"Would you please send me via email the following information.", and*

*"Please supply this information in an open reusable format (Microsoft Word for example) but if this is not possible in a hard copy."*

53. The council admits that it has not provided the complainant with the information in the format which he stipulated but argues that it was not reasonable for it to provide the information in these formats under the circumstances of the case.

54. It said that it informed the complainant that it would not be able to provide the information in these formats on 29 January 2018. The Commissioner notes that a letter was sent to the complainant acknowledging his request, which stated: *"The response will probably comprise of .wav files for the audio, excel spreadsheet for the measurement data, .pdf and word documents for accompanying notes."* The council argues that at that time the complainant did not object to this or state that these formats would be unacceptable.

55. The council argues that it was not able to provide the information by email on the basis that the file size of the email would have been 1.24 gigabytes and was too large for the council to email as it has an email size limit of 2 megabytes on its servers. It noted that the complainant had also confirmed that the information could be provided in hard copy if this was not possible in his request. It argues therefore that although it was not able to send him the information by email, it nevertheless was able to provide him with the information in electronic format.

56. The complainant said to the Commissioner that he wanted the information in electronic format so as to maintain an 'audit trail'. He also said that he wanted it in electronic form in order to be able to 'reuse' the information as he is not able to scan information into electronic form should he need to do so. In supplying the information via the DVD the council has allowed him to do this.

57. The complainant also asked for the information to be provided to him in re-usable formats, giving the example of Microsoft Word. The information was provided to him in Excel, PDF and Wav formats.

58. The complainant argues that he is not experienced in using WAV files and should not have to research this in order to play the recordings. The council argues that WAV is a standard sound file format which is able to be read by computers and on CD players. The council also said that WAV is the standard format commonly used for sound files of this type, and is

the default file type set by the manufacturer on its sound monitoring equipment.

59. The Commissioner is also aware that it is not standard to provide sound files as Microsoft Word documents, although it is possible to do so. She understands that WAV is a common sound file format used on PC's alongside MP3 sound files. Even without the complainant knowing what WAV files are, computer systems will generally be able to play WAV files with the software included with the computer system when it was purchased. No additional research should be necessary. Additionally WAV files will play on some CD and DVD players as a matter of course.
60. The council also provided the complainant with Excel and PDF files. Although these are not Microsoft Word files they are standard formats for windows PC's, and free software which can read these is generally available on the internet.
61. If the complainant is able to read a Word file, (as his request suggests), then these formats should be able to be read by downloading freely available software. Additionally Microsoft Excel forms part of the Microsoft Office suite, which also includes Microsoft Word. It is therefore hard to argue that Microsoft Excel is any less reusable a format than Microsoft Word.
62. The council said that PDF files were provided rather than Microsoft Word files as this is a commonly accepted format for supplying documentary information in an electronic format which is accessible on various types of IT equipment, including tablets, smartphones, Apple Mac computers and traditional window computers.
63. The Commissioner also notes that PDF files are also provided in order to retain the integrity of a document; they are not as easily manipulated as Microsoft Word documents. PDF files can be read by software which is also freely available to download, and widely distributed on the internet. For instance, the Commissioner's own website provides links to the necessary software to read PDF files at <https://ico.org.uk/global/accessibility/>.

### Conclusions

64. Having considered the arguments provided above the Commissioner is satisfied that the council provided the information to the complainant in alternative formats, however this was reasonable under the circumstances of the case.

65. The Commissioner therefore considers that the council complied with the requirements of Regulation 6 in providing the information in the formats it did.

Regulation 9

66. Regulation 9 of the EIR provides that *"A public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants."*
67. The complainant requested help and assistance from the council but argues that this was not forthcoming. He asked the council:
- "The request was can you provide any advice and assistance that may help my request be more effective? If my request is too general please provide advice and assistance as to how it can be refined."*
68. In his request for review he argued that *"No help and advice has been offered"*.
69. The council's response to the request for help and assistance was to state that it had *"provided all the information requested therefore the request was not too general and did not need to be refined in order to provide the requested information and no advice, or assistance, was required. All the information held has been disclosed"*.
70. The Commissioner understands that the general issue regarding the lack of help and assistance was that the complainant was unable to access the information the council had provided to him due to his lack of experience in using the formats in which the information was provided. As noted above however the council provided the information in formats which were reasonable under the circumstances of this case.
71. In correspondence with the Commissioner the complainant argued that *"In conclusion I would like to point out that as I have no formal training in connection with sound monitoring it is difficult for me to be precise when asking for information. Initially I requested help and assistance but this was not forth coming. In all honesty I can state that prior to the council's e mail I had no knowledge that .wav file existed. I would not expect to have to undertake any research in order to understand the information supplied"*.
72. Whilst the Commissioner understands the complainant's arguments, the council has provided the complainant with technical recordings which are used as evidence in an environmental complaint. The council has sought to provide information to the complainant in accordance with his wish

that the information is in a reusable format. It also provided summaries of the information where it was possible to do so.

73. Whilst the Commissioner accepts that, in some cases, summaries of technical information may be requested by recipients, the information in the WAV format in this case is sound files of background noise. As the recordings are of background noise levels, no transcripts of the content could feasibly be provided beyond measurements of noise levels (which are already included on the excel sheets).
74. Whilst the complainant may have no experience in using WAV files, only a cursory amount of research would be required in order to understand how to play such files on a PC, and they will also play on many CD or DVD players. The Commissioner would expect the complainant to carry out the limited level of research (if required at all) in order to be able to access the information held in these files. Alternatively she expects recipients to seek assistance from third parties if they are not able to do so themselves.
75. She has therefore decided that the council's response complied with the requirements of Regulation 9 in this respect.

## **Right of appeal**

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76. 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)

77. 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.
78. 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**