

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 24 January 2019

**Public Authority:** East Riding of Yorkshire Council

**Address:** County Hall  
Beverley  
HU17 9BA

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

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1. The complainant has submitted a request for information to East Riding of Yorkshire Council ("the Council") about the Council's cooperation with Hull City Council under the Local Plan. The Commissioner has previously issued a decision notice in which she found that the Council had not responded to this request in accordance with the EIR, and required the Council to issue a fresh response that complied with the terms of the EIR. The Council subsequently issued a fresh response in which it disclosed held information. The complainant submitted a complaint to the Commissioner in which he contested that further information was held.
2. The Commissioner's decision is that the Council has made all held information available.
3. The Commissioner does not require the public authority to take any steps.

## Request and response

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4. On 27 October 2017 the complainant wrote to the Council and requested information in the following terms:

B. *Equally, in the documents you asked me to look at, I find, no evidence that ERYC established the full and continuing working relationship with Hull CC that government requires*

*a) in cooperating with Hull, for example in dealing with the problem of population migration out of Hull that is clearly identified in the pre-2016 Local Plan*

*and*

*b) in preparing the Local Plan ERYC adopted in 2016.*

*Our correspondence in 2014 established that ERYC met Hull CC planners relatively few times, and that the continuing working relationship between the two councils required by Government was not created in any effective, continuing, or substantive way.*

*If there are documents that will shed further light on these questions that I missed, or that you did not send, will you please re-send or send them?*

*And again if no such documents exist, you are obliged to tell me that.*

5. The Commissioner issued a decision notice<sup>1</sup> on 18 June 2018 which found that the Council had not responded to this request in accordance with the EIR, and required the Council to issue a fresh response that complied with the terms of the EIR.
6. The Council issued a fresh response on 17 July 2018 in which it disclosed held information, and directed the complainant to where information was held but already publicly available.
7. On 24 July 2018 the complainant asked the Council to undertake an internal review on the basis that further information was held.

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<sup>1</sup> <https://ico.org.uk/media/action-weve-taken/decision-notice/2018/2259280/fer0751321.pdf>

8. The Council provided the outcome of its internal review on 27 July 2018. It maintained that its original response was correct.

### **Scope of the case**

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9. The complainant subsequently complained to the Commissioner that further information was held.
10. The Commissioner considers the scope of the case to be the determination of whether the Council has made available all held information that would fall within the parameters of the request.

### **Reasons for decision**

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

11. 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.
12. Where there is a dispute between the information located by a public authority, and the information a complainant believes should be held, the Commissioner follows the lead of a number of First-tier Tribunal (Information Rights) decisions in applying the civil standard of the balance of probabilities.

#### Context

13. The request relates to whether the Council has established cooperation with Hull City Council under the terms of successive Local Plans, namely the 1996 'Beverley Borough Local Plan' ("the Borough Plan") and the subsequent (and overriding) 'East Riding of Yorkshire Local Plan' ("the County Plan"), which began to be implemented from 2012 onwards.

#### The Council's position

14. The Council has informed the Commissioner that there was no commitment within the Borough Plan for the Council to cooperate with Hull City Council, due to there being no requirement to include this when the Borough Plan was created. Whilst the Council now holds such a duty, this was not effected until the implementation of the Localism Act 2011, which contains a specific duty to cooperate with a neighbouring authority on planning matters.

15. The Council was required to provide its evidence that it complied with this duty as part of the Examination in Public of the County Plan. This information has been made publicly accessible on the Examination in Public section of the Council's webpages under the heading 'Duty to cooperate', and the Council has provided the complainant with the relevant URL<sup>2</sup>. The Council has also provided the subsequent Inspectors report, which contains reference to the duty to cooperate. Lastly, the Council notes that it has also referred the complainant to connected information held by Hull City Council, and has provided the relevant URL<sup>3</sup>.
16. The Council has informed the Commissioner that it is not aware of any further recorded information that would fall within the parameters of the request, as all known documents would be held in the library of documents submitted to the Inspector under the heading 'Duty to cooperate'. Additionally, no information is known to have been previously destroyed.
17. The Council has further informed the Commissioner that it considers the request has been made on an incorrect premise (i.e. that there was a commitment in the Borough Plan for the Council to work with Hull City Council on planning matters such as population migration), and additionally, to pursue what the complainant perceives as the Council's non-compliance with planning obligations. Whilst the Council has attempted to provide advice and assistance to the complainant in order to allay his concerns, it maintains that its response under the EIR is correct.

#### The Commissioner's conclusion

18. The Council has provided the Commissioner with a cogent explanation of what information it holds that would fall within the parameters of the request, and why it has concluded that no further recorded information is held.
19. The complainant has raised various concerns to the Commissioner. However, the majority of these appear to fall outside both the scope of this case, and the terms of the EIR, and no definitive evidence has been

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<sup>2</sup> <http://www2.eastriding.gov.uk/environment/planning-and-building-control/east-riding-localplan/examination-in-public-information/>

<sup>3</sup> [http://hullcc-consult.limehouse.co.uk/portal/localplan/lpsub\\_1](http://hullcc-consult.limehouse.co.uk/portal/localplan/lpsub_1)

provided that further recorded information is likely to be held by the Council besides that already made available.

20. The Commissioner notes, as she did in decision notice FER0751321, that the comments made by the complainant indicate that the focus of his concerns are that the Council has failed to record accurate information, or otherwise demonstrate certain actions in respect of implementing the Borough and County Plan. The Commissioner emphasises that the EIR relate only to the provision of recorded information, and do not impose any obligations on a public authority to create specific information as part of its activities.
21. For the above reasons, the Commissioner has concluded that the Council has made available all held information that would fall within the parameters of the request.

## Right of appeal

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22. 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)

23. 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.
24. 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**