

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

### **Decision notice**

**Date:** 9 May 2019

**Public Authority:** East Woodhay Parish Council

**Address:** Gilton Ash  
Tile Barn  
Woolton Hill  
Newbury  
RG20 9UX

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

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1. The complainant has requested all information and documents relating to a certain cricket ground and club. He has also requested all information regarding activities or plans concerning the allocation of funds within the ward which would affect the cricket club and ground from East Woodhay Parish Council ("the Council"). The Council states that it has provided all of the information it holds and it does not hold any further information surrounding the scope of the complainant's request.
2. During the course of the Commissioner's investigation, the Council had discovered further information that the clerk had recently gained access to and that was not provided at the point of responding to the request.
3. The Commissioner's decision is that the Council has breached regulation 5(1) and 9(2) of the EIR.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Provide a fresh response to the request, considering regulation 9(2) of the EIR.
5. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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6. *On 24 August 2018, the complainant wrote to the Council and requested information in the following terms:*

*"I write on behalf of [names redacted] of the cricket ground at [address redacted] ('the Ground') which is leased to the East Woodhay Cricket Club ('the Club') I would like to make a formal request for information under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 (as applicable to information sought and held) for the disclosure of documents concerning the activities and plans since 2014 of East Woodhay Parish Council, its members, officers, employees, committee members, sub-committee members, servants and/or agents (collectively 'EWPC') including their communication with Basingstoke and Deane District Council (including any employees, members, sub-contractors or officers thereof) ('the Council') and its Chairman who is also the Ward Councillor for East Woodhay ('Cllr [name redacted]') which relate to allocating funds or to otherwise benefit councils, societies, activities or residents in [name redacted]'s Ward ('the Ward').*

*This request includes but is not limited to copies of all documents which are to do with*

- *The Ground, and/or*
- *The Club (including individual members and or officers of the club) on matters relating to the Ground and/or the Club, and/or,*
- *Matters concerning plans for allocating funds or projects within the Ward which would affect the Club and/or the Ground and/or its owners such as*
  - o *S 106 monies since 2015.*
  - o *The Neighbourhood Plan, since 2011,*
  - o *The Local Infrastructure Fund since 2014,*
  - o *The EWPC s 106 Committee, EW Sports Committee, Project Club Together, and any other committee meetings attended by [name redacted] related to sports and leisure activities in his Ward since 2014 (collectively 'PCT');*
  - o *'trusted Council' status allocated to EWPC whereby any projects it approves with the agreement of [name redacted] will automatically pass and any other similar arrangements that any other member of the Council has in place relating to any other funding or support for projects in the Ward since 2015*

*The request is for copies of all documents relating to the matters above held by EWPC (as defined above) and other documents under the*

*Council's control such as internal and external correspondence, electronic communication such as email or text messages between EWPC and the Council; and/or Residents; and/or Officers; and/or members of organisations in the Ward such as East Woodhay Society, the Club, the Woolton Hill Sports Club, Woolton Hill Argyle Football Club, East Woodhay Charities, East Woodhay Village Hall Committee ('EW Clubs') and notes of internal and external communications, meetings, meeting minutes, meeting agendas, documents referred to in such correspondence or meetings"*

7. The Council responded on 26 September 2018. It provided some of the information but stated that some information was readily available and other information contained personal data. Therefore it refused to provide the remainder, citing section 21 of the FOIA and regulation 13 of the EIR.
8. The complainant requested an internal review of the Council's response to his request on 26 September 2018 and the Council had directed him to the Borough Council to request an internal review but after some correspondence between the Parish Council, the Borough Council and the complainant, the Parish Council agreed to complete an internal review for the request.
9. Following an internal review, the Council wrote to the complainant on 23 October 2018. It stated that it did not hold any further information relating to the scope of the complainant's request. It also advised of the lessons learned regarding the need for it to publish its internal review process on the Council's website. It also outlined other lessons it had learned regarding its internal processes.

### **Scope of the case**

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10. The complainant contacted the Commissioner on 15 October 2018 to complain about the way his request for information had been handled.
11. After clarification from the complainant regarding the Council's application of regulation 13 (personal data) of the EIR, it has been confirmed that he has no concerns or complaints relating to regulation 13.
12. The complainant explained that his main concerns were to do with the "Lack of disclosure", the "Lack of documents from August/September/October/November 2015", the "Neighbourhood Plan", and the "Trusted Council Status".

13. It is worth noting at this stage that the Commissioner can only provide her view on the complaint relating to access to information, and not the accuracy of any information published or provided in response to a request for information. Nor can she comment on a public authority's timeliness of publishing information that has not previously been requested. Therefore the Commissioner cannot assess the accuracy of information disclosed in response to a request. Nor can she look into accusations of maladministration.
14. As the Council has applied both sets of legislation relating to accessing public information, the Commissioner will assess which of the legislation is more appropriate to use, the FOIA or the EIR.
15. The Commissioner considers that the scope of this case is to determine whether the Council handled the request in accordance with the FOIA or EIR and whether the Council was correct in stating that it does not hold any further information relating to the request the complainant made on 24 August 2018. She will also consider whether the Council was correct to advise the complainant that some of the information he requested was readily available in another form and its application of section 21 of the FOIA.

## Reasons for decision

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### Regulation 2: Environmental information

16. Regulation 2(1) of the EIR defines environmental information as being any information in written, visual, aural, electronic or any other material form on:
  - a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;*
  - b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);*
  - c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to*

*in (a) and (b) as well as measures or activities designed to protect those elements;*

*d) reports on the implementation of environmental legislation;*

*e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c);*

*f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of elements of the environment referred to in (b) and (c);"*

17. It is important to ensure that requests for information are handled under the correct access regime. This is particularly important when refusing to provide information, since the reasons why information can be withheld under FOIA (the exemptions) are different from the reasons why the information can be withheld under the EIR (the exceptions). In addition, there are some procedural differences affecting how requests should be handled.
18. The Commissioner has considered the purpose and contents of the information request and she understands that the request relates to funding activities for a cricket ground. Because this matches with the definition in regulation 2(1)(c), she has considered the information disclosed so far in light of the definition at regulation 2 of the EIR.
19. To explain further, the Commissioner's interpretation of the phrase 'any information... on' is that it will usually cover information concerning, about, or relating to the measure, activity, factor etc. in question. It is not necessary for the information itself to have a direct effect on the elements of the environment, or to record or discuss such an effect.
20. The Commissioner is satisfied that the information contains written information on measures - specifically, activities - affecting or likely to affect the state of the elements of the environment, specifically, soil, land and landscape. Therefore the Commissioner will assess the Council's handling of the request under the EIR.

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

21. 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.
22. The Council argued that it had provided the complainant with all of the information it holds which falls within the scope of his request. The

complainant considers that further information must be held and provided evidence from another source to show the Council should hold more information. In particular, the complainant believes that the Council is withholding some documents between August and November 2015 and also information relating to the sub-committee, the "Trusted Council" status and the Neighbourhood Plan.

23. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).
24. The Commissioner asked the Council to explain what searches were carried out for relevant information, whether it had held any information at any point that fell within the scope of the complainant's request and whether it has a record of its deletion or destruction if it had been deleted or destroyed.
25. The Council responded to the enquiries and described the searches it had undertaken. It advised that any information it holds is either on a central filing system using Dropbox, or it is within the councillors' own email records. Within these files, the Council explained that it had made searches of all the available documents that related to anything mentioned within the scope of the complainant's request.
26. The Council advised further that anything found using the search terms with the subjects within the complainant's request was provided to him in a hard copy. The only information that was not provided was anything that was a duplicate copy from the Council's Dropbox to any councillor's email files. The Council notified the Commissioner at that point to say that some information may have been held in previous councillors' individual inboxes but the Council no longer has access to these.
27. In terms of finding out if there had been any destruction of records, the Commissioner asked the Council if any further information was ever held relevant to the scope of the request but was then deleted or destroyed. She also asked that if this was the case, when did the Council cease to retain this information. The Council responded to say that to the best of its knowledge, it has provided all of the information it holds to the complainant and that no recorded information that is available to the Council has been deleted or destroyed. However, as explained in paragraph 26, the Council could not access everything the complainant might believe it could due to the fact that some information may have been held in previous councillor's or clerk's individual inboxes.

28. The Commissioner notes that within the complainant's concerns, he outlined his dissatisfaction regarding the lack of disclosure of documents between August and November 2015. Due to this, the Commissioner has asked the Council to provide what it had already disclosed to the complainant. The information disclosed did not include any documents or emails from the specific period the complainant was concerned with. Because of this, the Commissioner asked the Council why this was the case.
29. The Council responded to the Commissioner and advised:
- "Some of the emails/documents might have been held on personal accounts of previous councillors and therefore it would not be possible to get them if they weren't copied to the previous Clerk. Maybe there was nothing documented- the PC is not obliged to minute meetings that are not public, so email correspondence, if any, would be all there was."*
30. The Commissioner also recognises from the Council's submissions that the new way of storing data (in Dropbox) was implemented in 2015 and this could be why there appears to be some information missing.
31. The complainant contacted the Commissioner during the investigation to highlight that he had received some information from the Borough Council in response to another request that shows East Woodhay Parish Council should hold further information and he provided this to the Commissioner. This appeared to contain emails between the Parish and Borough Councils relating to the cricket ground and club and numerous drafts of the Neighbourhood Plan. As the Parish Council outlined in its submissions, it might not hold this information due to it possibly being kept on previous councillors or clerks individual email inboxes, which it no longer has access to or holds.
32. Despite the Council advising this, the Commissioner made further, specific enquiries regarding the pre submission drafts of the Neighbourhood Plan provided by the Borough Council as it would have been expected that the Parish Council would hold the same information.
33. In response to the enquiries, the Council initially said it did not have access to anything relating to the Neighbourhood Plan as it had only recently been picked up again to start new work on.
34. The Commissioner highlighted to the Council that the evidence the complainant provided to her showed that the pre submission drafts were made in June 2018, two months before the request was made. She provided the Council with a copy of the information the complainant had

sent to her and urged it to complete extra searches considering it had advised that no information had been deleted or destroyed.

35. The Council responded to advise the Clerk had recently been given access to a folder relating to the Neighbourhood Plan, it had found these documents but did not agree that any of this was within the scope of the complainant's request. However, the complainant does specifically mention the Neighbourhood Plan in the request made on 24 August 2018.
36. Because of this, the Council had found vast amounts of information and had subsequently attempted to provide this to the complainant. However, due to the amount of information it would have to assess to check whether it would be within the scope of the initial request and acceptable for disclosure, the Council could not provide all of the information to the complainant during the course of the Commissioner's investigation.
37. The Commissioner is satisfied that the Council does hold more information within the scope of the complainant's request. Nonetheless, the Commissioner recognises that the scope of the complainant's request is broad and open for interpretation therefore, it would be appropriate for the Council to reassess the request and provide a fresh response.

## **Regulation 6 – Form and format of the information**

38. Within the Council's initial response to the request, it cited section 21 of the FOIA. As the information the complainant requested is defined as environmental, the Commissioner has used the closest EIR regulation, 6(1)(b).
39. Regulation 6(1) 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."*
40. While it is the case that the complainant did not request the information in a particular form or format, the Council advised the complainant in its response that the minutes from meetings were already available on its website.

41. The Commissioner understands the Council directed the complainant to its website for some of the information he requested but the complainant has raised his concerns about the how the Council does not publish meeting minutes on its website in a timely manner.
42. The Commissioner's guidance on information in the public domain<sup>1</sup> states that *"To be in the public domain, information must be available at the time of the request. This is consistent with the general rule that public authorities should consider the circumstances as they exist at the time of the request..."* (paragraph 24)
43. As explained in paragraph 13 of this decision notice, the Commissioner cannot comment on a public authority's timeliness of publishing information that has not previously been requested.
44. Because of this, as the Commissioner understands the Council had directed the complainant to its website to find the information it had already published, she can find no breach of regulation 6(1)(b).

### **Regulation 9 – Advice and assistance**

45. Regulation 9 states that:

(1) 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.

(2) Where a public authority decides that an applicant has formulated a request in too general a manner, it shall—

(a) ask the applicant as soon as possible and in any event no later than 20 working days after the date of receipt of the request, to provide more particulars in relation to the request; and

(b) assist the applicant in providing those particulars.

46. Since the Council has found more information within the scope of the request, it is now of the opinion that the scope is too broad and it is unlikely to be able to provide everything the complainant has asked for.

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<sup>1</sup> <https://ico.org.uk/media/1204/information-in-the-public-domain-foi-eir-guidance.pdf>

47. The Commissioner finds that the Council has breached regulation 9(2) by not identifying the extent of the request and asking him to provide more particulars in relation to the request.

## Right of appeal

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48. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

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

49. 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.
50. 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**