

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

Decision notice

Date: 2 August 2019

Public Authority: Bath and North East Somerset Council
Address: The Guildhall
High Street
Bath
BA1 5AW

Decision (including any steps ordered)

1. The complainants requested information about a planning enforcement case involving their home. Bath and North East Somerset Council ("the Council") disclosed some information and said that it held no further information within scope.
2. The Commissioner's decision is that the Council holds no further information within the scope of the request and has therefore complied with its duty under Regulation 5(1) of the EIR.
3. The Commissioner does not require any further steps.

Request and response

4. On 25 September 2018 the complainants requested information of the following description in relation to planning enforcement activities which the Council had taken under reference 14/00705/UNAUTH:

"[1] The number of complaints, dates and nature of complaints (excluding complainant's identity) that led enforcement officers to conclude that alleged breaches of planning control had occurred to the extent to justify the issuing of the above Enforcement Notice.

[2] The number of working hours spent by the enforcement officers and other local authority employees in the administration of the above Enforcement Notice. This information to include time spent

in research, discussion, report writing, correspondence, site visits, filing, archiving and other general administration.

[3] Records of deliberation, discussion and consultation by means of internal notations, memoranda, research or other relevant documents, minutes, discussion notes, photographs or video footage, that justified the decision to issue the above Enforcement Notice."

5. On 23 October 2018, the Council responded to both the above request and a Subject Access request submitted around the same time. It provided information in respect of element [1] and stated that it held no information in respect of elements [2] and [3].
6. The complainant requested an internal review on 5 November 2018. The Council sent the outcome of its internal review on 12 December 2018. The Council upheld its original position but provided some further explanation as to why it did not hold the requested information.

Scope of the case

7. The complainants contacted the Commissioner on 5 March 2019 to complain about the way their request for information had been handled. Due to the nature of the enforcement activity, the complainants considered that more information should exist to justify the action.
8. During the course of the investigation, the Council clarified that it did in fact hold some information within the scope of element [3] of the request but that this information had already been released in response to a Subject Access Request (SAR) which the complainants had submitted.
9. The scope of this notice is to consider whether any further information is held, beyond that already disclosed.

Reasons for decision

Is the requested information environmental?

10. Regulation 2(1) of the EIR defines environmental information as being information 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)...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); and*
 - (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 the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);*
11. The Commissioner considers that any information within the scope of the request that the Council held would be information relating to planning enforcement matters. She believes that it would be likely to be information about "measures" affecting the elements of the environment. Whilst this does not affect whether further information is held, for procedural reasons, the Commissioner has therefore assessed this case under the EIR.

Regulation 5(1) – Held/Not Held

12. Regulation 5(1) of the EIR states that: "*a public authority that holds environmental information shall make it available on request.*"
13. 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 complainant's evidence and arguments. She will also consider the actions taken by the authority to check whether the requested information was held and any other reasons offered by the public authority to explain why the information is not held. Finally, she will consider any reason why it is inherently likely or unlikely that information is not held.

14. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
15. The Council has stated that it has provided all information which it holds in response to each element of the request – however as the justification as to why no further information is held differs for each element, the Commissioner has addressed each one in turn.

Element [1]

16. In its initial response, the Council stated that it had received one enquiry prior to commencing enforcement action. The complainants, during the course of the investigation, expressed surprise that the Council was willing to take enforcement action on the basis of a single complaint and asked the Commissioner to raise this matter with the Council.
17. The Council confirmed that it had received a single enquiry prior to enforcement action commencing – but it wished to stress to the Commissioner that:

"we initiated enforcement action because we identified there had been a breach of planning control (a position that was upheld on appeal). With any enforcement case it is somewhat irrelevant who the complaint comes from or indeed how many complaints we receive, if there is an identified breach of control and it is considered expedient to enforce (having regard to local and national policy and relevant legislation) we will initiate formal action."

18. The Commissioner is aware of no evidence that calls into question this explanation from the Council. Therefore, in light of this explanation from the Council, she accepts that on the balance of probabilities the Council does not hold any further information within the scope of this element of the request.

Element [2]

19. The complainants expressed surprise that the Council was not recording the amount of time spent on individual cases as this would be needed for audit purposes.
20. The Council explained in its internal review that it did not make any record of the amount of time officers spent on particular cases and therefore the information was not held.

21. The Commissioner enquired whether the Council held other information (such as officer timesheets) from which the requested information could be deduced. The Council responded to say:

"The Planning Services Team (within which the Enforcement Team sit) do not produce timesheets for time spent working on individual cases and do not log timesheets for a working day. Each case is different and therefore takes a different length of time."

22. The Commissioner considers that the Council has provided a rational explanation as to why it should not be expected to hold the requested information. The staff involved would be likely to be paid by the day, regardless of the amount of cases worked upon and therefore the information the complainants are seeking would be unlikely to exist in recorded form. As she accepts this explanation from the Council, the Commissioner concludes that, on the balance of probabilities, the Council did not hold information within the scope of element 2 of the request.

Element [3]

23. The Council confirmed to the Commissioner that records within the scope of this element of the request had already been disclosed to the complainant via various information requests. Nevertheless, it described to the Commissioner the searches which had been carried out to search for additional information.
24. The Council explained to the Commissioner that the records relating to the enforcement action would be held on its UNIFORM database. Any records which were originally received in paper format would have been scanned and uploaded manually onto the system.
25. The Council confirmed that it had searched its UNIFORM system and asked officers to search their emails for mentions of the enforcement reference number, the name of the site and for the complainants' surname. These searches had not uncovered any additional information.
26. Whilst the Council noted that it had a statutory duty to retain information of this kind for six years after the last significant action on the case, it confirmed that it had not deleted or destroyed any relevant information. It also noted that internal meetings would be carried out verbally with no minutes taken.
27. The Commissioner is satisfied that the Council has carried out relevant searches which would be likely to identify any relevant information within the scope of the request.

28. In this case she is satisfied that, on the balance of probabilities, the Council holds no further information within the scope of the request.

Other Matters

29. In its response and at the internal review stage, the Council stated that it held no information within the scope of the request before stating that information had been provided in respect of a SAR.
30. Whilst the Commissioner accepts that the Council was simultaneously processing a SAR from the complainants, a public authority must still identify the extent of the information it holds within the scope of a request, even if most or all of that information is the personal data of the requestor(s) – and would therefore engage the exception at Regulation 5(3).

Right of appeal

31. 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

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

32. 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.
33. 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

Ben Tomes
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF