

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 25 November 2020

Public Authority: South Northamptonshire Council

Address: The Forum
Moat Lane
Towcester
Northamptonshire
NN12 6AD

Decision (including any steps ordered)

1. The complainant requested information relating to a particular planning application.
2. South Northamptonshire Council (the Council), provided some information within the scope of the request but denied holding further information. The complainant considered that the Council held further relevant information.
3. The Commissioner's decision is that, on the balance of probabilities, the Council is correct when it says that it holds no further information within the scope of the request.
4. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

5. On 13 January 2020, the complainant wrote to the Council and requested information in the following terms:

'Planning Application [reference redacted]

With regard to the above planning application, under the freedom of information act, I request any information stored by you, this

would include, for example, emails (including internal), telephone recordings, documents, memos, etc'.

6. The Council responded on 17 February 2020. It provided some information within the scope of the request but refused to provide the remainder. It cited the following exception as its basis for doing so:
 - Regulation 12(4)(e) – internal communications
7. Following an internal review the Council wrote to the complainant on 24 March 2020 maintaining its original position.

Scope of the case

8. The complainant contacted the Commissioner on 26 April 2020 to complain about the way his request for information had been handled. He considered that internal e-mails regarding the planning application had been incorrectly withheld.
9. Following the Commissioner's intervention, the Council revisited its handling of the request. It determined that, in light of the passage of time and events that had occurred in relation to the planning application since its previous responses, it was able to release the previously withheld emails to the complainant.
10. The complainant confirmed that he had received further information from the Council. However, he remained dissatisfied with its handling of his request and believed that the Council was withholding information.
11. The Commissioner wrote to the Council advising that she was continuing with her investigation. She explained that, based on the wording in some of the emails he had recently received, the complainant considers that the Council holds further information within the scope of the request.
12. The analysis below considers whether, on the civil standard of the balance of probabilities, the Council holds further information within the scope of the request.

Reasons for decision

Regulation 5 duty to make environmental information available on request

13. Regulation 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. 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 searches carried out by the public authority, in terms of the extent of the searches, the quality of the searches, their thoroughness and the results the searches yielded. In addition, she will consider any other information or explanation offered by the public authority which is relevant to her determination.
15. For clarity, the Commissioner is not expected to prove categorically whether further 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.
16. In this case, the Commissioner has sought to determine whether, on the balance of probabilities, the Council held further information, namely internal communications, within the scope of the request.

The complainant's view

17. The Commissioner acknowledges that the complainant considers that the Council holds further information within the scope of his request.
18. In support of his view that further information exists, the complainant referred the Commissioner to one of emails that the Council had provided to him. Using that email as an example, he explained:

"I cannot see what was asked of [name redacted] and her reply".

The Council's view

19. During the course of her investigation, the Commissioner asked the Council questions, as is her usual practice, relating to how it established whether or not it held further information within the scope of the request.
20. In its submission, the Council confirmed:

"... all documentation within the scope of [the complainant's] request has now been submitted to him".
21. In support of that view, the Council told the Commissioner that the officers involved in the planning application were asked to search their

files for any relevant information. It advised that the searches included systems, including Microsoft Outlook and the Council's planning software, as well as network folders.

22. The Council explained that all staff members are given training on what searches need to be carried out when an FOI/EIR request such as the one under consideration in this case is received.

23. The Council also told the Commissioner:

"... the Council's planning department operate on a paperless basis and therefore no paper records are kept. All records are electronic".

24. In the course of her correspondence, the Commissioner asked the Council questions about its records management policy. The Council confirmed that, in accordance with its policy, planning records:

"...are to be retained indefinitely due to the legislation they must comply with".

25. With respect to whether there a business purpose for which the requested information should be held, the Council told the Commissioner:

"The requested information is retained as it relates to how the application was assessed and is necessary to keep an audit trail of how the case was considered".

The Commissioner's view

26. The Commissioner recognises that the requested information is clearly of interest to the complainant. She acknowledges that he explained the basis on which he believes that the Council held further information within the scope of his request, namely the wording in some of the emails he has received.

27. The Commissioner's role is to make a decision based on whether recorded information is held and has been provided.

28. The EIR cover recorded information. In that respect, the Commissioner's guidance to public authorities states¹:

¹ <https://ico.org.uk/for-organisations/guide-to-the-environmental-information-regulations/what-are-the-eir/>

"The Regulations will cover any recorded information you hold that falls within the definition of 'environmental information'. It is not limited to official documents or information you create – it can cover, for example, drafts, emails, notes, recordings of telephone conversations and CCTV recordings".

29. Her guidance also states:

"The Regulations do not cover information that is in someone's head. If a member of the public asks for information, you only have to provide information you already have in recorded form. You do not have to create new information or find out the answer to a question".

30. Having considered the evidence provided by the Council, including details of the actions taken to search for relevant information, the Commissioner is satisfied, on the balance of probabilities, that no further information within the scope of the request is held.
31. The Commissioner therefore considers that the Council complied with its obligations under Regulation 5 of the EIR.

Right of appeal

32. 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

33. 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.
34. 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

Laura Tomkinson
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SK9 5AF