

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

Date: 9 June 2021

Public Authority: Dartmoor National Park Authority
Address: Parke
Bovey Tracey
Newton Abbot
Devon
TQ13 9JQ

Decision (including any steps ordered)

1. The complainant has requested information associated with a planning application. Dartmoor National Park Authority ('DNPA') has disclosed information it holds that is within scope of the request, but the complainant considers that DNPA holds further relevant information.
2. The Commissioner's decision is as follows:
 - Other than one letter to the complainant discussed at paragraph 22 of this notice, on the balance of probabilities DNPA does not hold any further information relevant to the request and has complied with regulation 5(1) of the EIR.
 - DNPA's response did not comply with regulation 5(2) as it was not provided to the complainant within 20 working days of their request.
3. The Commissioner does not require DNPA to take any remedial steps.

Request and response

4. On 7 July 2020 the complainant wrote to DNPA and requested information in the following terms:

"Thank you for your recent email. There has been no response to my letter of 20/5/2020 to [redacted], a copy of which I sent you. You have merely outlined you have spoken to [redacted]. There are therefore now three issues to which I require a stage 2 response to proceed to the Ombudsman and please refer back to the emails. There will be a fourth issue along the same vein, planning application [redacted]. Could you please arrange for all the virtual planning file to be emailed to me under FOI. I wrote to the planning officer about correspondence from [redacted], in his personal capacity which appears on the planning file as parish council comments and is referred to in the decision notice as parish meeting comments which is simply untrue and incorrect. Why was this not corrected and in reality ignored. It is also completely unacceptable that [redacted] was involved in this application given my outstanding unresolved complaints and furthermore not acceptable that there is one policy for his application [redacted] where no problem with his use of a certificate of lawful use for a massive rebuild but policy objection to mine and others which is a matter for the Ombudsman. Please address. Also I thought if you were going to refuse an application the planning officer notified in advance hence why applications are withdrawn, so please address this point as well. Provide the relevant information please about this, why has there been no communication whatsoever and why with a conflict of interest is [redacted] involved."

5. On 10 August 2020, the complainant clarified their request, as follows:

"I don't need a copy of anything on the website but in particular require details of who wrote the report, Officers notes and sight of emails on this application please"

6. DNPA responded on 17 August 2020. It confirmed that it was handling the request under the EIR and that it had interpreted the request as a request for the planning file for the planning application in question. It advised that the planning file included: application forms, submitted drawings and reports, email correspondence, on-line representations, photographs, consultation responses, an officer report and the decision notice.
7. DNPA explained that under regulation 6 of the EIR public authorities can refuse to provide information that is already publicly available. In this case, DNPA noted that information within scope of the request is

published on its website and provided a link to that information. But DNPA also provided the complainant with a copy of the information as a pdf document.

8. The complainant requested an internal review on 18 August 2020. They noted that they had requested the case officer's notes used to inform the planning decision and that this particular information did not appear to be included in the information that DNPA had confirmed it held. The complainant said that DNPA case officer had advised them that the other issues they had raised would be addressed in their subsequent planning application and the officer had confirmed they had written the planning report.
9. Following an internal review DNPA wrote to the complainant on 18 September 2020. It noted that it had responded to the request outside of the required 20 working days but confirmed that it did not hold any further information relevant to the request.

Scope of the case

10. The complainant first contacted the Commissioner on 20 August 2020 to complain about the way their request for information had been handled.
11. The Commissioner's investigation has focussed on whether DNPA holds any further information within the scope of the complainant's request and has complied with regulation 5(1) of the EIR. She has also considered the timeliness of DNPA's response.

Reasons for decision

12. Under regulation 5(1) of the EIR, a public authority that holds environmental information must make it available on request if it is not excepted from disclosure or, under regulation 5(3), the applicant's own personal data.
13. Under regulation 5(2) a public authority must make information available as soon as possible and no later than 20 working days after the date of receipt of the request.
14. In its submission to the Commissioner, DNPA confirmed that it received the planning application in question on 13 May 2020 and it was validated on 27 May 2020. DNPA went on to explain that since the first Covid-19 'lockdown' started on 23 March 2020, it had ceased creating paper files for its planning applications and everything associated with

an application has since been dealt with and held electronically. As such no paper file exists for the application that is the focus of the complainant's request.

15. DNPA says that any information it holds in relation to the planning application, including electronic documents, are stored in its Development Management database system, electronic document management system (eDRMS) or on shared network drives. Emails are stored in Microsoft Exchange/Outlook before being transferred to the eDRMS.
16. In its correspondence of 17 August 2020, DNPA advised the complainant that the 'virtual' planning file can be viewed on-line on its website and it sent the relevant link. DNPA notes that it also went on to advise that the only document on the file that is unavailable to view on-line was the un-redacted version of the complainant's planning application form, a copy of which it had provided to the complainant.
17. DNPA says that the electronic audit trail for this planning application shows that from the date of validation to the determination date on 7 July 2020, only two planning officers added or caused something to change on the file: the case officer and the Deputy Head of Development Management who reviewed the case officer's report and signed off the planning decision on 6 July. The only other officers who appear on the audit trail between these dates are officers who are both planning administration officers and who were responsible for validating the application and issuing the planning decision notice.
18. Before responding to the complainant's request, DNPA says that it undertook a comprehensive search of its IT systems for any relevant information. The officers mentioned above also carried out searches of their email accounts. DNPA has told the Commissioner what search terms it used to carry out these searches. The search terms are relevant names (associated with a property and individuals) and other identifying information associated with the application in question.
19. DNPA's searches revealed no additional notes, emails or any other correspondence on this application to or from the case officer, the Deputy Head of Development Management or any other planning officer from the date of validation to the determination date on 7 July 2020. Emails were subsequently exchanged between the complainant and the case officer, but these had no bearing on the determination of the application itself.
20. One of DNPA's planning administration officers had retained some correspondence with the complainant, and various administrative documents are retained on DNPA's database but, with the exception of

one document, these either pre-date validation and so do not form part of the planning file or are not considered to fall within the scope of the request.

21. With regard to the one document referred to above, DNPA says that a further search of its records prior to drafting its submission to the Commissioner had identified one letter that it considers to fall within the scope of the request and so should have been released as part of its 17 August 2020 response. This letter is DNPA's standard acknowledgement that it sends to all applicants when their application becomes valid, and a copy was emailed to the complainant on 2 June 2020. Although in the case officer's name, these letters are sent by DPNA's administration colleagues and retained on their files.
22. DNPA has provided the Commissioner with a copy of the letter sent to the complainant. Since it is addressed to the complainant the letter can be considered to be the complainant's own personal data and, as such, is excepted from disclosure under regulation 5(3) of the EIR. The complainant will already have received this particular information, which is routine and administrative in nature; moreover, the complainant has confirmed that the focus of their interest is information about the planning report and officers' notes and emails. However, for completeness DNPA may nevertheless want to release a copy of this letter to the complainant under the data protection legislation.

Conclusion

23. The Commissioner has considered DNPA's submission and the complainant's correspondence to her. She notes that at the time of the request, DNPA held all planning information electronically and no paper records were held. The Commissioner considers that the searches for relevant information that DNPA undertook of its electronic systems, including relevant email accounts, were appropriate. The Commissioner has therefore decided that, on the balance of probabilities, apart from the letter discussed above that DNPA has now identified, it holds no further information falling within scope of the complainant's request and has complied with regulation 5(1) of the EIR.
24. DNPA did not comply with regulation 5(2) however as it did not provide the complainant with an appropriate response within 20 working days of receiving their request.

Right of appeal

25. 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 and from 14 June 2021: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

26. 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.
27. 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

Pamela Clements
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Wycliffe House
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