

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 12 October 2022

Public Authority: Thorne Moorends Town Council

Address: Assembly Rooms
Fieldside
Thorne
DN8 4AE

Decision (including any steps ordered)

1. The complainant has requested information about Thorne Moorends Town Council's (the Council) neighbourhood plan. The Council disclosed some information within the scope of the request, but stated that it holds no further relevant information.
2. 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. Therefore, it has complied with regulation 5(1) of the EIR.
3. The Commissioner does not require the Council to take any remedial steps on this matter.

Request and response

4. On 20 December 2021, the complainant wrote to the Council and requested information in the following terms:

"I request by use of FOI Act 2000 of today's date the signed off Minutes of meetings of the Thorne Moorends Town Council Neighbourhood Plan for the 4th June 2019 (I have only the Draft Minutes) ,the 7th June 2021 (I have only the Draft Minutes) and any further Minutes draft or otherwise of such meetings held by the Thorne

Moorends Town Council and its Neighbourhood Plan after the 22nd July 2021.”

5. The Council responded on 5 January 2022. It provided the approved minutes from the meetings on 4 June 2019 and 7 June 2021. It also stated that whilst it believed there was a further meeting which took place in October 2021, it did not hold any minutes from that meeting.
6. Between 5 January 2022 and 31 May 2022, the complainant reiterated their request on multiple occasions for the rest of the information which was not provided in the Council’s initial response to their request – that being the minutes from the October 2021 meeting, and minutes from any further meetings which may have taken place since then.
7. Throughout the multiple exchanges between the Council and the complainant about this matter, the Council maintained its position that it holds no further information within the scope of the request.

Scope of the case

8. The complainant contacted the Commissioner 4 March 2022 to complain about the way their request for information had been handled. Specifically, they noted that the meeting which took place in October 2021 was important in terms of decisions relating to the Neighbourhood Plan and that the Council must hold some information about what took place at that meeting.
9. The Commissioner considers that the scope of his investigation is to consider whether, on the balance of probabilities, the Council holds any further information within the scope of the request.

Reasons for decision

Correct access regime

10. Information is ‘environmental information’ and must be considered for disclosure under the terms of the EIR, rather than FOIA, if it meets the definition set out in regulations 2(1)(a) to 2(1)(f) of the EIR.
11. Regulation 2(1)(c) of the EIR states that any information on measures such as policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect the elements or factors of the environment listed in regulation 2(1)(a) and 2(1)(b) will be environmental information.

12. The information requested in this case relates to minutes from the Neighbourhood Plan working group meetings. It is the Commissioner's view that the information, if held, is a measure (proposals to redevelop land) which will, or will be likely to, affect the environment.
13. Therefore, the Commissioner considers that the request is for environmental information, and that the EIR is the appropriate access regime. However, it is important to note that this point is purely procedural and does not affect whether or not the Council holds the requested information, or the subsequent outcome of the Commissioner's investigation.

Regulation 5 – duty to make environmental information available on request

14. Under regulation 5(1) of the EIR, and subject to a number of EIR provisions, a public authority which holds environmental information shall make it available on request.
15. 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. He will also consider the actions taken by the authority to check that the information is not held, and he will consider any other reasons offered by the public authority to explain why the information is not held. The Commissioner will also consider any reason why it is inherently likely or unlikely that information is not held.
16. In this case, the member of Council staff who dealt with the request when it was originally submitted found no evidence of the Council holding the remaining information which was being sought by the complainant. Furthermore, a different member of Council staff, who corresponded with the Commissioner during his investigation into this complaint, searched again for the remaining information but found no evidence of the Council holding it. The Commissioner is therefore satisfied that the Council conducted appropriate and thorough searches for the requested information.
17. In relation to the minutes from the October 2021 meeting, the Town Clerk stated that they did not attend the meeting, nor did they receive any minutes from any of the attendees to type up and make available to the public.
18. In its efforts to locate any further information within the scope of the request, the Council contacted a third-party who was present at the October 2021. The third-party informed the Council that all work on the Neighbourhood Plan had been deemed outdated and thus abortive, and

the only way forward was to start again. The Council also confirmed that no work had taken place to restart the Neighbourhood Plan to date, but that it intended to have it back up and running by the latter part of 2022/23. The Commissioner accepts the above as a reasonable explanation as to why the Council held no information about any further meetings of the Neighbourhood Plan working group beyond October 2021.

19. The Commissioner acknowledges the complainant's argument that they were told that hand-written notes may have been taken by a third-party who was present at the October 2021 meeting, however the legislation provides that a public authority need only consider for disclosure information which it already holds in recorded form at the time when it receives the request. It does not provide that a public authority should seek to get the information from other sources if it does not already hold it itself, nor does it provide that a public authority should create information in order to respond to a request – ie writing meeting notes which it does not already hold in recorded form.
20. The Commissioner concludes that, on the balance of probabilities, the Council holds no further information within the scope of the request, and is not required to take any further steps on this matter.

Right of appeal

21. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

22. 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.
23. 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

Claire Churchill
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Wycliffe House
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SK9 5AF