

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

**Decision notice**

**Date:** 3 November 2022

**Public Authority:** Stafford Borough Council  
**Address:** Civic Centre  
Riverside  
Stafford  
ST16 3AO

**Decision (including any steps ordered)**

---

1. The complainant requested information from Stafford Borough Council ("the Council") regarding planning application decisions and discussions regarding a neighbouring development.
2. The Council provided relevant information and links to further published information, which was accessible online, they cited section 21 (accessible by other means), and section 40(2) (personal information) of FOIA for redactions of the disclosed information and stated it did not hold any further information within scope of the request.
3. The Commissioner's decision is that, on the balance of probabilities, the Council holds no further recorded information relevant to the complainant's request and has complied with section 1(1) of FOIA.
4. The Commissioner does not require any steps to be taken as a result of this decision notice.

## **Request and response**

---

5. On 8 August 2021, the complainant wrote to the Council and requested information following on from previous requests, in the following terms:

"Thank you for providing the information. I have finally had the opportunity to look at it. With respect, all you have provided is information that is readily available on line, to the general public. There is nothing within these documents with demonstrates or records the decision making process that must have taken place, particularly by the case officer Mr Alford before he made his submission to the Planning Committee. It is my understanding the Freedom of Information Act legislates for that to be provided and I did specify e mails in my request. I should be grateful if you would review my original request and respond accordingly."

6. The complainant and Council had a lengthy email exchange, and on 1 February 2022 the complainant reiterated that the scope of their request was for documentary evidence to demonstrate all objections were actively considered and the rationale for objections being overruled.
7. On 22 February 2022, the Council responded stating they had interrogated their email systems again for any relevant information in scope of the request. The Council provided some further information and cited section 40 of FOIA for the redaction of personal information, and section 21 of FOIA for information already in the public domain on their website. The Council stated all other information had been provided by links to information on its website, and that it did not hold any further information in scope of the specific request of 1 February 2022.
8. On 28 February 2022, the Council answered some further points made by the complainant and reiterated they had supplied all information held within scope of the request.

## **Scope of the case**

---

9. The complainant contacted the Commissioner on 1 February 2022, and with further information on 28 February 2022 to complain about the way their request for information had been handled.
10. The Commissioner considers the scope of his investigation is to determine if the Council has correctly refused to provide the information requested under section 1 of FOIA.

## **Reasons for decision**

---

### **Section 1 FOIA - determining whether information is held**

11. Section 1(1) of the FOIA states:

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

If a public authority does not hold recorded information that falls within the scope of the request, the Commissioner cannot require the authority to take any further action.

12. In cases where there is a dispute as to the information held by a public authority, the Commissioner will use the civil standard of proof, i.e., the balance of probabilities. In order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request.

13. Accordingly, the investigation will consider the scope, quality, thoroughness, and results of the searches, and/or other explanations offered by the Council as to why the information is not held.

14. The Commissioner will also consider any arguments put forward by the complainant as to why the information is likely to be held (as opposed to why it ought to be held). Finally, the Commissioner will consider whether there are any further steps the public authority could be required to take if the complaint were upheld.

### **The complainant's position**

15. The complainant stated:

"My latest request of the FOI officer has provided me with a PDF which is supposed to supply "all e mails" both internal and external.

I have two observations to make.

Why were they not provided in response to my first request?

It is hard to believe that a project the size of Crown Wharf has generated so few e mails."

16. The complainant continued:

"I still haven't been provided with anything which demonstrates that objections or support were constructively considered, or the reasons for overruling the objection."

### **The Council's position**

17. The Council stated that:

"We have responded to the complainant several times since February to reiterate the planning process and to demonstrate that we have supplied information that has been requested and that we have answered subsequent requests and challenges to our responses already supplied."

18. They confirmed searches of central email systems were undertaken which included specific search terms and would have retrieved relevant information as the planning application number, as quoted by the complainant, was included in searches. And state this would ensure recovery of all relevant records and information.

19. And, also said that:

"All planning applications are held online as a Statutory Requirement. All application information is uploaded to our planning system to be used within the planning process of assessing and determining applications. Information for enforcement cases is not made publicly available in the same way but is stored on internal systems to support the investigation and resolution of planning control complaints. These internal systems were interrogated for the complainant's requests."

### **The Commissioner's view**

20. The Commissioner has carefully considered the points made by the complainant and the Council.

21. The Commissioner appreciates that the complainant has concerns about the way their objections have been perceived to have been handled by the Council's planning department. However, the Commissioner considers that the Council's responses have adequately addressed these points.

22. In addition, the Commissioner is unable to identify any further action that the Council could reasonably be expected to take as part of its statutory obligations under FOIA in order to identify or locate the information falling within the scope of this request. As has been set out above, if information is not held then it cannot be disclosed in response to a request.
23. In conclusion, the Commissioner finds, on the balance of probabilities, the Council does not hold any further recorded information falling within the scope of this request.
24. The Commissioner notes that the request to the Council consisted of information around planning and discussions concerning the neighbouring environment, as such, the Commissioner considers the requested information is environmental within the meaning of the Environmental Information Regulations 2004 (EIR), and therefore should have been handled by the Council under that legislative regime rather than FOIA.
25. The Commissioner considers that, had the request been considered under the EIR, the same decision in paragraph 23 would apply.

## **Right of appeal**

---

26. 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)

27. 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.
28. 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 .....**

**Phillip Angell**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**