

## **Environmental Information Regulations (EIR)**

### **Decision notice**

**Date:** 23 March 2023

**Public Authority:** Mid Devon District Council  
**Address:** Phoenix House  
Phoenix Lane  
Tiverton  
Devon  
EX16 6PP

### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to a decision made by Mid Devon District Council (the Council) to increase the amount of a loan which it had provided to 3 Rivers Developments Limited (3 Rivers).
2. The Council considered the request under the Freedom of Information Act 2000 (FOIA). It provided some information in response to the request, and directed the complainant to where other information could be found on its website.
3. The Commissioner's decision is that the request is for environmental information, and should therefore have been considered under the EIR.
4. However, the Commissioner is satisfied that, on the balance of probabilities, the Council has provided all the information held that falls within the scope of the request, and has complied with its obligations under regulation 5(1) of the EIR.
5. However, as the Council failed to provide the information which it held within 20 working days, it has breached regulation 5(2) of the EIR.
6. The Commissioner requires no steps to be taken.

## **Request and response**

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7. On 16 September 2022, the complainant wrote to the Council and requested information in the following terms:

“Finally, because I feel I was too general in my previous emailed requests, will you please provide/answer these four specific pieces of information:

  1. When, and Where, was the Decision of Cabinet (06/09/2022), concerning 3 Rivers Funding, actually published?
  2. When were the Draft Minutes of the Cabinet meeting, on 06/09/2022, actually provided to Members and published on the MDDC Website?
  3. Who was consulted on the Draft Minutes of the Cabinet Meeting (06/09/2022), before they were published, and when?
  4. Please supply me with copies of the emailed exchanges, and attachments, as well as any handwritten minute amendments, which took place as part of the consultation on the Draft Minutes of the Cabinet meeting on 06/09/2022.”
8. The complainant did not receive a response to their request, and contacted the Council again, now requesting an internal review.
9. The Council responded to the complainant on 21 November 2022, providing some information in response to parts 2, 3 and 4 of the request. With regard to part 1 of the request, the Council cited section 21 of FOIA, and provided two links to its website.

## **Scope of the case**

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10. The complainant has stated that they believe that the Council holds additional information which should have been provided in response to their request. They have also raised concerns about the timeliness of the council's responses.
11. The Commissioner will therefore decide whether, on the balance of probabilities, the Council holds any further information which should have been provided in response to the request. He will also consider certain procedural matters, as requested by the complainant.

## **Reasons for decision**

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### **Correct information access regime**

12. The information requested relates to the decision made to increase the amount of a loan given by the Council to 3 Rivers; the latter is a property development company that is wholly owned by the Council.
13. The Commissioner understands that 3 Rivers had requested an increase in the amount of the loan previously given by the Council in order to deal with overspends on two building development projects, to increase the working capital of 3 Rivers, and to work on "alternative prospects" relating to "out-of-District projects".
14. The Commissioner is satisfied that the finance provided by the Council by way of a loan to 3 Rivers is to be used for the purpose of building construction and the redevelopment of areas within Devon; he therefore regards the loan to be integral to a measure (the redevelopments) which will be, or will be likely to, affect the environment (the land).
15. The Commissioner therefore considers that the information is environmental under regulation 2(c) of the EIR and the request should have been considered under this access regime.

### **Regulation 5 – duty to make environmental information available on request**

16. Regulation 5(1) of the EIR requires a public authority that holds environmental information to make it available on request.
17. Where there is a dispute between a public authority and a complainant as to whether all requested information falling within the scope of a request has been provided to the complainant, the Commissioner, following the lead of a number of First-tier Tribunal decisions, must decide the matter based on the civil standard of on the balance of probabilities.
18. The complainant states that they are aware that the Cabinet made a decision at a meeting of 6 September 2022 to provide an increase in the amount of a loan provided to 3 Rivers. They have argued that the Council has an obligation to formally publish the decision that has been reached to about the loan, but that this, and other information relevant to the request, has not been provided.

19. The Council has confirmed to the complainant that the minutes of the meeting of 6 September 2022, sets out the decision reached to increase the loan, and that this information was published on its website on 15 September 2022.
20. The Council has said that the complainant has implied in other correspondence that they have sent to its legal team on related matters that other information should be held, and published, about the decision to increase the amount of the loan.
21. The Council has advised the Commissioner that the decision is recorded on its website and is available using the links it has provided to the complainant. It has confirmed that the "decision" was not published in any other location, or at any other time. The Council states that whilst in some cases "decision notices" are published in hard copy at Phoenix House, this did not occur in this instance. The Council has said that the complainant has already been informed of this by its legal department.
22. Whilst the complainant may have concerns about the process that has been followed by the Council in relation to the publication of a "decision notice" in respect of the agreed increase of a loan to 3 Rivers, this is not a matter for the Commissioner. In a case such as this, he is only required to consider whether, on the balance of probabilities, the public authority has identified and released all the information held that is relevant to the request.
23. The council has confirmed to the Commissioner that it has provided all the information held that is relevant to the terms of the request. The Commissioner has found no evidence which would indicate further information is held.
24. It is therefore the Commissioner's decision that, on the balance of probabilities, the Council has complied with its obligations under regulation 5(1) of the EIR.

## **Procedural matters**

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25. The council has provided the Commissioner with some explanations for the delay in dealing with the complainant's request.
26. The Commissioner acknowledges that the complainant initially sent their request directly to the email inbox of an officer within the legal team, who was on leave at that time. However, in his opinion, the legal officer should have identified the request upon their return, and then dealt with it accordingly, but failed to do so; as a result, it was only upon receipt of

the complainant's request for an internal review that the request was then considered, and a response provided.

27. As the Council failed to provide the information held that was relevant to the request within 20 working days, the Commissioner finds that it has breached regulation 5(2) of the EIR.

## Right of appeal

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28. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

29. 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.
30. 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 .....**

**Suzanne McKay**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**