

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

Date: 1 April 2025

Public Authority: Bristol City Council
Address: City Hall
PO Box 3399
Bristol
BS1 9NE

Decision (including any steps ordered)

1. The complainant requested information relating to meetings between a former Mayor and a developer. Bristol City Council (the "Council") stated that it did not hold the requested information. The complainant disputes this.
2. The Commissioner's decision is that that, on the balance of probabilities, the Council holds no recorded information relevant to the complainant's request and that it correctly applied regulation 12(4)(a).
3. The Commissioner does not require further steps.

Background

4. The request relates to the YTL Arena Bristol which is scheduled to open in 2026¹.
5. The focus of the request is on specific meetings between the developer, YTL, and the former Mayor of the Council.

Request and response

6. On 8 August 2024 the complainant requested the following information from the Council:

"Under the Freedom of Information Act 2000, I wish to see all minutes, agendas, action logs, and briefing materials for the meetings held between former Mayor Marvin Rees on 04/03/2024 and 27/03/2024 with YTL/YTL UK"
7. The Council responded on 21 August 2024 and confirmed that the information was not held, stating that the Mayor's inbox and communications were "shut down" when they left office.
8. On 26 August 2024 the complainant asked the Council to carry out an internal review.
9. The Council issued a review response on 31 October 2024. This confirmed that it had reconsidered the request under the EIR and that it was maintaining its position that the information was not held.

Scope of the case

10. On 7 November 2024 the complainant contacted the Commissioner to complain about the way their request for information had been handled. The complainant disputes the Council's position that it does not hold the requested information.
 11. The Commissioner has considered whether the Council holds information falling within the scope of the request.
-

¹ <https://www.ask.bristol.gov.uk/charlton-road-walking-wheeling-and-cycling-improvements-survey>

Reasons for decision

Would the requested information be environmental?

12. Regulation 2(1) of the EIR defines environmental information as being information on:
- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
 - (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
 - (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;
 - (d) reports on the implementation of environmental legislation;
 - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
 - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);
13. In this case the Council's position is that the requested information is not held. Although the Commissioner has, therefore, not seen the requested information, as it is information relating to a proposed development, the Commissioner considers it is likely to be information on measures as defined in regulation 2(1)(c). He has, therefore, assessed this case under the EIR.

Regulation 12(4)(a) – information not held

14. Regulation 5(1) of the EIR requires a public authority, who holds environmental information, to make it available on request.
15. Regulation 12(4)(a) of the EIR allows a public authority to refuse to provide the requested information if it does not hold it at the time of the request being received.
16. The complainant disputes the Council's position and has argued that the information is held in archived rather than deleted form. The complainant considers that the Council should make efforts to retrieve the information.
17. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).
18. In order to make this determination the Commissioner directed the Council to explain what searches it undertook for information falling within the scope of the request.

Searches carried out for relevant information

19. The Council confirmed that it carried out eDiscovery and SharePoint searches which retrieved 716 email exchanges between Council officers and 276 SharePoint folders.
20. It explained that the search terms/phrases used were:
 - Meeting between Mayor Marvin Rees and YTL and YTL UK
 - YTL Arena
 - Date range: 01/02/2024 – 31/05/2024
21. The Council explained that these searches would have been likely to retrieve any relevant information related to the request as a result of the search terms used. It confirmed that, following a review of the correspondence retrieved from the searches, it did not find any minutes, agendas, action logs, and briefing materials related to the request, i.e., meetings held between the former Mayor Marvin Rees on 04/03/2024 and 27/03/2024 with YTL/YTL UK.

22. The Council confirmed that some of the email correspondence retrieved from the search did show that senior Council officials visited the Arena on 27/03/2024. However, the Council explained that, as the Arena is a construction/building site, a formal meeting would not have been held or recorded in such an environment.
23. The Council further confirmed that it also liaised directly with two officers who involved in the YTL Arena project and they confirmed that they do not hold any minutes of meeting, agenda, action log or associated papers for dates specified in the request.

Deleted/archived information

24. The Commissioner asked the Council to confirm whether any information relevant to the request had been held at any time but subsequently (prior to the receipt of the request) deleted.
25. The Council confirmed that no information had been deleted. It explained that no information in the scope of the request had ever been created.
26. The Council explained that it retains regular backups of all emails for a period of 30 days in accordance with its Back Up Policy. It confirmed that this retention backup timeframe is related to recovering/restoring email accounts and, it is in no way related to the legal obligations for documents/record retention.
27. The Council confirmed that records created by the Council, including those created under the former Mayor's leadership, are not stored in email accounts rather, they are stored in SharePoint folders/data repository to enable business continuity in the event of individual unavailability or, when a staff member leaves the Council.
28. The Council confirmed that corporate records (e.g. meeting papers, project documents, HR and finance records etc) created by the Council including those created under the former Mayor's leadership are stored on SharePoint folders/data repository for the periods specified in the Council's Records Retention Schedule. According to this, minutes of meetings and agendas are retained for 6 years from the date they were created.
29. The Council explained that, given the seniority of the former Mayor's position, information related to significant decisions are documented in writing (e.g. in minutes and action logs, risk registers etc) and stored on the Council's SharePoint folders/data repository and, retained for the periods specified in the Council's Records Retention Schedule.

Is the former Mayor's email account retained in archive or back-up tape form?

30. Notwithstanding the Council's position that information relevant to the request had not been created or subsequently deleted, the Commissioner asked the Council to confirm whether the former Mayor's email account had been archived or was held in back-up tapes and whether it was otherwise accessible.
31. The Council explicitly confirmed to the Commissioner that none of these scenarios applied and stated that the former Mayor's email account was shut down in accordance with the Council's "starters" and "leavers" process. The Council retains regular backups of all emails for a period of 30 days in accordance with its ICT Back Up Policy.
32. The Commissioner notes that the former Mayor left the Council at the beginning of May 2024 and the request was made on 8 August 2024. The time elapsed between these two events is in excess of the 30 days specified in the Council's Policy.
33. The Council has further argued that there is a legal justification under principle 5 (storage limitation) of the UK General Data Protection Regulation (GDPR) for shutting down the former Mayor's email because it constitutes his personal data (first and last name) and personal data of others (employees, members of the public etc), therefore, the Council would have been in breach of data protection law if it had kept the former Mayor's email active/archived/backed up.

Relevant considerations

34. The Commissioner understands why the complainant might consider that relevant information would be held by the Council.
35. He acknowledges that the Council's handling both of the substantive subject of the request (the YTL arena) and of this request have been a matter of broader public concern, receiving coverage in the media².
36. In their submissions the complainant has referred to a First-Tier (Information Rights) Tribunal ("IT") decision which considers scenarios

² See, for example: <https://www.bristolpost.co.uk/news/bristol-news/unanimous-support-tory-motion-over-9788017>

where it might be appropriate for authorities to restore deleted information³.

37. Paragraph 18 of the IT decision states:

"...where the deleted or unamended information is still readily accessible and this is the information that the applicant wants, then the deleted or original version of the information should be recovered and that is what should be communicated to the applicant, with perhaps an explanation of what has happened to the information since the request was received."⁴

38. In relation to the searches that should be made for requested information, the Commissioner's guidance states:

"Under FOIA and EIR, a person is only entitled to receive information you hold at the time you receive the request. If you receive a request for information that you held in the past, and has now been destroyed, you no longer hold that information. In order to comply with FOIA or the EIR, you only need to reply stating you do not hold the information.

If you held the deleted information electronically and it has not been permanently overwritten or is recoverable, you may still hold that information for the purposes of the legislation."⁵

39. In relation to the restoration of deleted information identified in a request, the Commissioner's guidance advises public authorities:

"The ICO considers that it would be unreasonable for you to restore your system from backup every time you receive an information request, just in case you may hold some information. Taking such an approach would be likely to result in requests unnecessarily exceeding the cost limit.

If your initial search identifies that you may have deleted relevant information, you need to consider this matter as part of your overall response to the request.

3

https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i38/harper_v_information_commissioner.pdf

⁴ Ibid.

⁵ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/retention-and-destruction-of-information/>

However, if there is no indication that you deleted significant information, searches of your 'live' systems and any records held in relevant archives that you maintain are likely to be sufficient."⁶

The Commissioner's conclusions

40. Having considered the available evidence the Commissioner acknowledges that the Council's position is that information relevant to the request was never held and has not been deleted. It follows that, as confirmed in the Commissioner's guidance and set out above, it would not be reasonable in this case to expect the Council to attempt to reinstate the former Mayor's email account.
41. Secondly, the Council has explicitly confirmed that, in any event, the email account is not retained in archive or back-up tape form so it would not be possible for it to be retrieved. The Commissioner notes that the email account was deleted in accordance with the Council's records management policies.
42. The Commissioner has not seen any direct evidence which contradicts the Council's position in these matters.
43. Based on the evidence available to him, the Commissioner finds that, on the civil standard of the balance of probabilities, at the time it received the request, the Council did not hold the requested information.
44. When considering the public interest test, the Commissioner can only find that the public interest in maintaining the exception at regulation 12(4)(a) of the EIR outweighs any public interest in disclosure, simply because the information is not held.
45. The Commissioner is, therefore, satisfied that regulation 12(4)(a) applies and he does not require the Council to take any further steps in this case.

⁶ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/determining-whether-we-hold-information/#amended>

Right of appeal

46. 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

47. 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.
48. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Christopher Williams
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF