



**IN THE FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
INFORMATION RIGHTS**

**Case No. EA/2016/0061**

**ON APPEAL FROM:**

**The Information Commissioner's  
Decision Notice No: FER0585812  
Dated: 11 February 2016**

**Appellant: Grant Roxburgh**  
**1<sup>st</sup> Respondent: Information Commissioner**  
**Heard at: Chester Civil Justice Centre**  
**Date of hearing: 18 July 2016**  
**Date of decision: 11 August 2016**

**Before**

**ROBIN CALLENDER SMITH**  
Judge

and

**ANNE CHAFER and MALCOLM CLARKE**  
Tribunal Members

**Attendances:**

For the Appellant: Mr G Roxburgh

For the 1<sup>st</sup> Respondent: written representations by Ms E Kelsey, Counsel instructed  
by the Information Commissioner

**GENERAL REGULATORY CHAMBER**

**INFORMATION RIGHTS**

**Subject matter: EIR 2004**

Request for information Regulation 5 (1)

**Cases:**

*Linda Bromley v IC and Environment Agency (EA/2006/0072)*

**DECISION OF THE FIRST-TIER TRIBUNAL**

The Tribunal upholds the decision notice dated 11 February 2016 and dismisses the appeal.

**REASONS FOR DECISION**

Introduction

1. Mr Grant Roxburgh (the Appellant) asked for the contents of two planning files (2/3/4836) and (2/3/4710) that should have been held by Cheshire West and Chester Council.
2. Those two files related to the construction of Mill View Primary School, a school next to his property (see *Roxburgh v IC and Mill View Primary School* EA/2016/0039), and they date back to the mid-1960s.
3. Mill View Primary School in Chester was the subject of planning applications in the 1960s and the Appellant wanted to find out whether an area of land was being used by the school in accordance with the relevant planning permission. This had been the subject of a number of requests he had made to the Chester West and Chester Council.
4. The requests in this appeal to the Public Authority were as follows:

Request 1 (dated 30 April 2015) asked the Council to “... upload the entire contents of planning file 2/3/4836 on the planning Portal/statutory planning register.”

Request 2 (dated 9 May 2015) asked the Council: “Can I also request the following Environmental Information please. Planning file ref. 2/3/4710 is the planning consent for the development of the Mill View Primary School. The file is quite separate to 2/3/4836 (which is for the entrance to the school, not the school itself).”

5. The Council responded both requests 14 May 2015 providing the Appellant, in relation to Request 1, with the information relating to planning file 2/3/4836. It stated that the information relating to Request 2, and file 2/3/4710, was missing from archive.
6. The Appellant requested an internal review on the basis that the information provided in relation to Request 1 appeared to be incomplete. It was missing the planning application document. Regarding Request 2 he stated that the file must exist because it had been withdrawn by a Council officer in November 2014.
7. In June 2015, the Appellant complained to the Information Commissioner about the Council's handling of these two requests.
8. During the Commissioner's investigation he asserted that the Council had failed to carry out an internal review, that the council had blocked his attempts to access the requested information and was in contravention of the provisions of the Town and Country Planning (Development Management Procedure) (England) Order 2010 and its own publication scheme. In addition, the Council had failed to provide full contents of file 2/3/4836 because of the missing planning application document and that evidence showed that the other file – 2/3/4710 – did exist and that the Council had committed an offence under Regulation 19 of the

Environmental Information Regulations. That offence was the offence of altering records

9. The Council, in its response to the Commissioner, provided details about the nature of the requested files, how they had been held and the searches it had conducted.
10. The Commissioner's Decision Notice examined this issue in great detail between Paragraphs 16 – 58. It is not intended to rehearse all of the detail set out in the publicly available Decision Notice (FER 0585812 dated 11 February 2016) but the summary from the Commissioner's Response to this appeal set out the position:
  - (a) Files 2/3/4836 and 2/3/4710 relate to the same planning application. File 2/3/4710 covers the application at the outline stage, regarding use of the site for educational purposes, and that application had been approved on 12 July 1966. File 2/3/4836 covered detailed planning consent which was approved on 17 January 1967. The Council confirmed that it held the planning decision notice and accompanying plans for both the outline and the detailed stages. Additionally, it held the original hardcopy file for the detailed stage, containing the decision notice required by the legislation in force at the time and other documents such as site plans and correspondence.
  - (b) Records for planning applications prior to 1974 was stored by the Council as hard-copy documents in the Council's records store. The location of boxes in the record store was recorded on a spreadsheet maintained by its Records Management Service, and it was cross-referenced to an electronic register held by its Planning Service. The ledger recorded the identification number of the storage boxes and the reference numbers for the files the boxes contained.
  - (c) Documents could be requested from the store by email to the Council's Records Management Service citing the relevant box and file numbers to be retrieved. When the file was then retrieved by the Records Clerk a "request slip" was inserted in the box to show that the file had been requested by the named individual.
  - (d) As the request concerned pre-1974 files, the Council had requested the files from its record store, initially by email. It subsequently searched the Paper Records Management Database. File 2/3/4836 was identified as being located in box number 3655. The Council did not separately search for the original planning application

relating to the file as that was not expressly requested but it confirmed that any such application would have been contained in the 2/3/4836 file. As no associated applications had been found to be contained in file 2/3/4836, the Council could not confirm whether such an application had existed.

- (e) The Council had also searched for file 2/3/4710 and followed the same procedure. It had been unable to find the file in the relevant storage box and had subsequently made a search of its digital records. That search found that in respect of file 2/3/4710 only the planning Decision Notice and site plans were held. It had, therefore, carried out an internal investigation.
- (f) That internal investigation found that file 2/3/4710 had erroneously been sent to the Council's digital records contractor for the scanning of historic planning records at some stage between 2010 and 2012 when the Council undertook a digital transformation programme. As a result of that error, the Council now only held the Decision Notice and the site plan for the file – the key documents that were scanned – as the contractor had failed to return the hardcopy of the file 2/3/4710. The hardcopy file – which might have contained further documents such as correspondence – no longer existed. The Council acknowledged it should have been retained in accordance with its retention policy. The Council explained that it had no record of the destruction of the hardcopy file of 2/3/4710 and could only adduce an approximate date of its destruction from its records of the 2010/2012 digitisation programme. The Council confirmed that no electronic data had been deleted.
- (g) The Council explained that the main documents that were required to be retained for planning purposes with the relevant site plan and approved decision. It explained that the primary purpose for retaining files such as 2/3/4710 was to comply with its statutory obligations and also to provide general access to information for the public. The Council explained that the Town and Country Planning (Development Management Procedure) (England) Order 2010 placed an obligation on the Council to retain the information requested by the Appellant but it was unclear how that could apply retrospectively to files created in the 1960s.

#### The appeal to the Tribunal

11. In the Appellant's Grounds of Appeal and in the oral submissions he developed at the appeal hearing, he was supported by Councillor Matt Bryan, a Borough Councillor for the Upton Ward of Cheshire West in Chester Council.
12. Councillor Bryan adopted his written witness statement dated 8 July 2016.

13. In it he explained that he had a meeting on 12 June 2015 with the Planning Team Leader of Cheshire West and Chester Council and also with the Upton Parish Councillor.
14. During that meeting he had been told that the missing planning records that the Appellant had been pursuing had been lost during the Council's transfer of them. He was told that "many files went missing during that period".
15. He then wrote to the Monitoring Officer for the Council to record his concerns over the irregularities in the explanations that had been given to him and to the Appellant by the Council.
16. The upshot of this was that he had concluded – and made a formal complaint 9 September 2015 – that there was a culture within the Council of "throwing any information around, with a complete disregard for factual accuracy, in response to valid customer requests."
17. The Appellant supplied a 46-page series of comments to the Response of the Information Commissioner (set out at pages 43/88 in the Appeal Bundle).
18. The substance of the Appellant's contentions in this appeal are that he does not accept the "theories" about what happened to the requested documentation and it had had been unlawfully withheld from him without there being any accidental destruction involved.

### Conclusion and remedy

19. The Tribunal notes that at pages 150/158 of the Appeal Bundle is an investigation report conducted by Daniel Dickinson on 17 August 2015 in relation to the Planning History of Mill View Primary School. That report comes to a series of conclusions which are set out below:

[39]. It would appear that in the ordinary course of events a request was made, in the terms that RFI 2251173 was, should have triggered a recognition that records from both before and after 1974 were being requested. In respect of records after 1974, the referral to the online materials was the correct and appropriate response. In terms of the records requested from before 1974, the relevant systems should have been interrogated flagging up file 2/3/4710 in Box Number 3652 and file 2/3/4836 in Box Number 3655, both of which should, in the ordinary course of events, have been in archives.

[40]. It seems from the third paragraph [of the material examined in the report] that at least one system may have been checked, but that system was not a complete register of decision notices and the relevant notices in this case were not contained in that system. That appears to have been compounded by the assumption that the planning history of the school had been researched by planning enforcement colleagues.

[41]. Thus it seems to be the case that the pre-1974 systems were not fully interrogated as they should have been. It also appears that there were three opportunities for that error to be corrected (paragraphs 22, 24 and 25 above). It is regrettable that those opportunities were also missed.

[42]. Had those opportunities been taken, it is clear to me that the results of those checks would have indicated that there were two relevant files that could have been expected to be present in archives. It is clear to me that file 4836 would have been found at this time but that for the reasons set out above file 4710 would not have been.

[43]. It appears to me that there is no reasonable basis upon which officers could have known what happened to file 4710, irrespective of when the fact that it was not where it was supposed to be came to light. It appears to me that its discovery was solely on account of [named individual]'s fortuitous recollections after his discussions with me about the back-scanning process that took place between 2010 and 2012.

20. The Tribunal asked the Appellant whether he accepted these conclusions of the independent report. He replied that he did not accept these "theories".

21. The Tribunal finds that the evidence indicates that there had been two errors. The first relates to the scanning and destruction of file 2/3/4710 and the second relates to the mistaken production of a withdrawal slip 2/3/4710 in place of the file 2/4/4715 which had been retrieved.

22. Errors have compounded the confusion but there is a thorough explanation of why the information is not held contained in the Investigation Report set out in detail above.

23. The Tribunal concludes, on the balance of probabilities, that no further information either of the requested files is held by the Council and that the Council has complied with its duties in relation to Regulation 5 (1) EIR.

24. Our decision is unanimous.

25. There is no order as to costs.

Robin Callender Smith  
Judge  
11 August 2016