



**Freedom of Information Act 2000 (Section 50)  
The Environmental Information Regulations 2004**

**Decision Notice**

**Dated 2 June 2006**

**Public Authority: Mid Suffolk District Council**

**Address: Council Offices  
131 High St  
Needham Market  
Ipswich  
IP6 8DL**

**Summary Decision and Action Required**

**The Commissioner's decision in this matter is that the public authority has not dealt with the Complainant's request in accordance with The Environmental Information Regulations 2004 (the "Regulations") in that it has failed to comply with Regulation 14.**

**However, in the light of the matters set out below, the Commissioner does not require any steps to be taken by the authority.**

**1. Freedom of Information Act 2000 (the 'Act') & The Environmental Information Regulations 2004 – Applications for a Decision and the Duty of the Commissioner**

The Information Commissioner (the 'Commissioner') has received an application for a decision whether, in any specified respect, the complainant's request for information made to the public authority has been dealt with in accordance with the requirements of Parts 2 & 3 of The Environmental Information Regulations 2004 (the "Regulations"). The enforcement and appeals provisions of the Act apply for the purposes of the EIR.

Where a complainant has made an application for a decision, unless:

- a complainant has failed to exhaust a local complaints procedure, or
- the application is frivolous or vexatious, or
- the application has been subject to undue delay, or
- the application has been withdrawn or abandoned,

the Commissioner is under a duty to make a decision.

The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

## **2. The Complaint**

The complainant has advised that on 11 March 2005 the following information was requested from the public authority:

“In relation to planning application 230/00, under the terms of the Freedom of Information Act will you provide me with the details of:

1. The sewage treatment plant owned by the applicant which is being used for the foul water treatment as per the Planning Permission granted by the Council.
2. A copy of the Discharge Consent issued by the Environment Agency to permit the discharge from the stable yard complex into the river.
3. A copy of the completed “Checklist B” and related documents as required by the Planning Authority before non mains drainage is considered for the application.”

The Council responded to this request on 21 March 2005. This response stated that information relating to the planning application referred to in the information request was available for inspection at the Council premises. This response did not address the specific points of the information request.

Further correspondence was exchanged between the complainant and the Council. Following the involvement of the Information Commissioner, the Council has written to the complainant confirming that the information requested is not held. The allegation of the complainant is that, as well as the information request not having been responded to in accordance with the relevant statutory procedures, the Council has stated falsely that the information requested is not held by it.

## **3. Relevant Statutory Obligations under the Regulations**

Regulation 12(4)(a) states that:

“...a public authority may refuse to disclose information to the extent that-

(a) it does not hold that information when an applicant’s request is received”

Regulation 14(3)(a) states that:

“The refusal shall specify the reasons not to disclose the information requested, including-

(a) any exception relied on under regulations 12(4), 12(5) or 13”

#### **4. Review of the case**

The complainant initially contacted the Commissioner on 31 August 2005. The complaint was that the information requested had not been provided.

The Commissioner contacted the Council to raise the issue of this complaint on 15 February 2006. The Council was asked to confirm whether its stance was that the information request had been dealt with in accordance with the requirements of the Regulations. Alternatively, if during the process of reviewing its handling of this matter in response to contact from the Commissioner, the Council concluded that it had not dealt with the information request in accordance with the requirements of the Regulations, the Council was asked to ensure that an appropriate response to the information request was provided to the complainant.

Following a letter from the Commissioner dated 20 March 2006 chasing a response to the letter of 15 February 2006, the Council responded on 3 April 2006. This response stated that the complainant had attended a meeting with the Council and that this meeting had addressed the concerns of the complainant. The Council enclosed with its reply a copy of a letter sent to the complainant and stated that it believed this matter to be resolved.

The Commissioner then contacted the complainant to ascertain whether it considered this matter to be resolved and, therefore, it wished to withdraw their complaint. The response to this from the complainant was that it did not consider this issue to have been resolved as it did not consider that the Council had provided all relevant information held at the time that the request was made. At this time the Council also contacted this office to state that it had been in further contact with the complainant and to reconfirm its stance that the information requested was not held.

The Commissioner is satisfied that further investigation is unlikely to lead to evidence that suggests that the information requested by the complainant is held by the Council. The Council has stated that the information requested by the complainant is not held and there is no evidence available to the Commissioner that suggests otherwise. The Commissioner notes that the complainant has visited Council premises to view files related to the relevant planning application and has verified that the information requested is not present within these files.

#### **5. The Commissioner’s Decision**

The Commissioner’s decision in this matter is as follows:

##### **Regulation 12-**

There is no information available to the Commissioner that suggests that the information requested by the complainant is held by the Council. In relation to the allegation that information has been withheld from the requester without a valid reason within the Regulations for this, the decision of the Commissioner is that the Council has dealt with this request in accordance with Part 3 of the Act in that they have complied with Regulation 12.

### **Regulation 14-**

The response of the Council to the information request in this instance did not constitute a refusal notice valid for the purposes of Regulation 14. The response from the Council did not address the specific information requested by the complainant and did not state that the information requested was not held by the Council. This is in contravention of the requirement imposed by Regulation 14 to specify the reasons for not disclosing the information requested. In relation to this aspect of the complaint the Commissioner's decision, therefore, is that the Council has not dealt with this request in compliance with the requirements of Part 3 of the Regulations in that they have failed to comply with Regulation 14.

## **6. Action Required**

As the Commissioner is satisfied that the information requested by the complainant is not held, no action is required to be taken by the Council.

## **7. Right of Appeal**

Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Ref: FER0087781

**Dated the 2nd day of June 2006**

**Signed .....**

**Phil Boyd  
Assistant Information Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**