

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

Decision Notice

Date: 3 June 2010

Public Authority: Denmead Parish Council
Address: The Old School
School Lane
Denmead
Waterlooville
Hampshire
PO7 6LU

Summary

The complainant requested copies of all minutes and correspondence held by Denmead Parish Council ("the Council") relating to Hampshire Alliance for Rural Affordable Homes and landowners at a particular address covering the last 12 months. The Council initially refused to provide information, stating that the information held was exempt under section 41 of the Freedom of Information Act 2000 ("the FOIA"). Following a complaint, the Council released the withheld information with some redactions. The complainant asked the Information Commissioner ("the Commissioner") to consider whether the redacted information had been correctly withheld. He also alleged that the Council held further information falling within the scope of his request. The Commissioner investigated and decided that the Council should have considered the request under the Environmental Information Regulations 2004 ("the EIR"), however, the Council agreed to disclose the withheld information and the Commissioner was satisfied that no further information was held. The Commissioner does not require any steps to be taken.

The Commissioner's Role

1. The EIR were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be

enforced by the Commissioner. In effect, the enforcement provisions of Part 4 of the FOIA are imported into the EIR.

The Request

2. On 3 September 2009, the complainant wrote to the Council and requested information in the following terms:

"I respectfully request under the Freedom of Information Act all copies of minutes and correspondence held by the Parish Council which relate to affordable housing (HARAH) and/or the landowners at Kidmore Lane (Persimmon/Carpenter) covering the last 12 months".

3. The Council responded on 30 September 2009. It confirmed that it held information relating to the request but stated that this was exempt under section 41(1)(b) of the FOIA. It stated that it considered that disclosure of the information held would give rise to a breach of confidence.
4. On 14 October 2009, 5 November 2009 and finally on 25 November 2009, the complainant wrote complaining about the Council's refusal to provide the information. For clarity, this letter also referred to a general complaint that does not concern the Commissioner.
5. The Council supplied a copy of its internal review on 2 December 2009. Most of this letter concerned the general complaint referred to in the previous paragraph. However, at the end of the letter the Council stated that it had enclosed redacted copies of the information it held relating to the request. It provided the following information with redactions, mainly of names:
- Memo dated 29 January 2009
 - Notes of a meeting dated 26 January 2009
 - Notes of a meeting dated 20 October 2009 (post-dates the request)
6. The complainant replied on 9 December 2009. He stated that he believed that the Council had incorrectly made redactions to the information. He also alleged that further information relevant to the request was held. However, no further response was received from the Council.

The Investigation

Scope of the case

7. On 17 December 2009, the complainant contacted the Commissioner to complain about the way his request for information had been handled. He specifically complained that:
 - The Council was being obstructive and dishonest when it applied section 41 originally
 - The Council incorrectly redacted information from the documents it provided
 - The Council held further information relevant to his request that it had not identified
8. The Commissioner does not consider that there is any evidence that the Council was being deliberately obstructive and dishonest when it applied an exemption. It is also the case that during the course of the Commissioner's investigation, the Council supplied all of the withheld information to the complainant. The Commissioner therefore considers that these issues have been informally resolved and they are not addressed in this Notice.
9. In view of the above, this Notice therefore only concerns the issue of whether the Council held any more information falling within the scope of the request.

Chronology

10. The Commissioner contacted the complainant on 2 March 2010 to set out his understanding of the complaint. He asked the complainant to confirm that the Commissioner had correctly understood the complaint.
11. On 5 March 2010, the complainant replied that he was happy for the Commissioner to proceed based on the contents of the Commissioner's letter.
12. On 10 March 2010, the Commissioner wrote to the Council. He set out the details of the complaint and asked a number of questions.
13. On 22 March 2010, the Council supplied its response to the Commissioner. It explained that it was now willing to disclose the redacted material but wished to maintain that no further information was held. It responded to all of the Commissioner's questions.

14. On 13 April 2010, the Commissioner emailed the Council to query some points made in the Council's response.
15. The Council responded to the Commissioner on 6 May 2010.
16. During a telephone conversation on 10 May 2010, the Commissioner and the Council discussed the response and the Council confirmed that it had provided un-redacted copies of the memo and meeting notes that were originally withheld.
17. The Commissioner and the Council also discussed the request during a telephone conversation on 17 May 2010.

Analysis

Substantive Procedural Matters

Was the request for environmental information?

18. The Council handled the request under the FOIA. However, the Commissioner notes that the request relates to a plan to build affordable housing. In view of this, he considers that the request should have been handled under the EIR. It falls within the scope of regulation 2(1)(c) as it relates to information on a plan affecting one of the elements of the environment (in this case, land).

Was any more information held on the balance of probabilities?

19. When it is alleged that a public authority held more information, the Commissioner will consider whether this was the case on the balance of probabilities. In deciding where the balance lies, the Commissioner will consider any searches undertaken by the authority as well as considering, where appropriate, any other reasons offered by the public authority to explain why the information was not held.
20. The complainant made a number of points to the Commissioner explaining why he considered that further information was held as follows:
 - The Council had not provided any information concerning discussions regarding other sites that were initially identified by HARA.
 - The Council had not provided any information showing that it considered that there was an "overriding need to find a site as close as

- possible to the village centre and bus routes" as stated in its letter to the complainant dated 2 December 2009.
- On page 2 at paragraph 2 of the meeting notes provided to the complainant dated 26 January 2009, the Council refers to land for commercial development that might be released. The Council had not provided information relating to this.
 - On page 1 at paragraph 3 of the meeting notes dated 20 October 2009, the Council referred to the submission of a "master plan" for the site. The Council had not provided a copy of this plan.
21. Regarding the first bullet point above, the Council explained that it was not involved in the selection of the initial 12 sites and was not responsible for the rejection of any of the sites although it was involved in discussions which assessed the identified sites. The Council has explained that representatives of the Council were invited on site visits designed to help to determine their suitability. The Commissioner understands that these discussions were not recorded. As the documents provided to the Commissioner referred to the involvement of councillors, the Commissioner also asked whether any councillors held information relating to the discussions on behalf of the Council. The Council confirmed that it had written to the relevant councillors and they had confirmed that no further information was held on the Council's behalf at the time of the request.
22. Regarding the second point, the Council explained that the need to find a site close to the village centre was based on Policy H6 of the Winchester District Local Plan Review adopted in 2006. It stated that this is a public document. The Council maintained that it held no recorded information showing that it discussed this particular issue.
23. Regarding point 3, the Council explained that this refers to land at Carpenter's Field. It stated that this matter was discussed at the Annual Parish Assembly in April 2008. The Council explained that this information falls outside the scope of the request which asked for information "covering the last 12 months". The Commissioner agrees that this information is not covered by the request for this reason. The Council confirmed that no other information regarding this was held.
24. Regarding point 4, the Council confirmed that it had never been provided with the plan referred to. It explained that the Council was not the relevant planning authority as this was Winchester City Council.
25. The Council confirmed that the only information it held falling within the scope of the request had been provided. It stated that it had searched its electronic and paper records and could confirm that no other information was ever held.

26. Based on the above, the Commissioner was satisfied that on the balance of probabilities, no further information falling within the scope of the request was held.

The Decision

27. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the EIR because the Commissioner is satisfied that it held no information relating to the request other than the information that has been provided.

Steps Required

28. The Commissioner requires no steps to be taken.

Right of Appeal

29. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

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

Dated the 3rd day of June 2010

Signed

**Gerrard Tracey
Principal Policy Adviser**

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

Legal Annex

Environmental Information Regulations 2004

Regulation 2 - Interpretation

Regulation 2(1) In these Regulations –

“environmental information” has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form 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) and (b) as well as measures or activities designed to protect those elements;

Regulation 5 - Duty to make available environmental information on request

Regulation 5(1) Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.