

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

Decision Notice

Date: 8 November 2010

Public Authority: Winsley Parish Council
Address: 26 St Nicholas Close
Winsley
Bradford on Avon
Wiltshire
BA15 2NH

Summary

The complainant requested any information held on the council's negotiations with a local charity over the lease of a playing field. He also specifically asked for copies of letters issued by a councillor on the working group negotiating on behalf of the council. The council stated that it did not hold any information. It also stated that the councillor's letters were his own private correspondence and therefore not available to the council or to the complainant under the Act.

The Commissioner's decision is that the letters were private correspondence and that that council did not hold the information and therefore regulation 12(4)(a) applied. However the council does hold some information which the Commissioner considers is relevant to the request, and his decision is therefore that this should be considered for disclosure to the complainant. The Commissioner therefore considers that the council also breached regulation 5(1) in not informing the complainant that it held the information and Regulation 14(3) in not providing the complainant with a valid exception for withholding this information.

The Commissioner's Role

1. The Environmental Information Regulations (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 Information

Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR.

Background

2. The Commissioner understands that at the time of this request Winsley Parish Council was in difficulties with discord occurring between various Councillors. This related partly to council matters which are covered within the scope of this request.
3. The complainant's request relates to a lease which the Parish Council holds on a field owned by a Hospice, a charity situated in the village. The lease was due for renewal and a working party of three Councillors was set up by the council to renegotiate it with the charity.
4. The Hospice wished to change the terms of the lease to allow it to park cars on the field on about 10 occasions over the year. The parish council stated that it had concerns about the damage which it felt was likely to the field if cars were allowed to be parked on it on such a regular basis. It stated that it was worried that if cars parked on the field after heavy rain it would soon become unusable as a playing field.
5. At least one member of the working group ('Councillor A') was also a resident in the village. He wrote a number of letters to other residents in the village and to other parties about the Hospice's position. He also wrote a number of articles in the local newsletter expressing opinions on the actions of the Hospice in trying to change the terms of the lease. This correspondence argued that the Hospice could use other fields to park and that due to the damage that would be caused the field should not be used for car parking. He stated that the council had been informed that persistent use as a car park would leave the field in a dangerous condition for fast, running games.
6. In these circumstances the complainant made a request for copies of all information relating to the working groups negotiations with the Hospice, as well as copies of the correspondence issued by Councillor A as described above.
7. On 9 April 2010, subsequent to the Commissioners receipt of this complaint but prior to him beginning his investigation, the council called an extraordinary meeting in which the former chairman of the council and eight other Councillors, including Councillor A and the other members of the working group, announced their immediate resignation

from the council, stating that this was due to their working relationship with a colleague: Councillor B. This left Winsley Parish Council inquorate and unable to function until it could be reconstituted. Its powers therefore reverted to the County Council until elections could be held or new Councillors co-opted. The Commissioner understands that this has now occurred, and that Councillor B is now the chairman of the newly constituted council.

8. This internal discord provides some explanation of the difficulties which the council has had in responding to the complainant's request in this instance. The Commissioner understands that the former members of the working group were part of the group in dispute with Councillor B, and that it was Councillor B who reviewed the council's initial decision to claim that the request was vexatious.
9. At least one member of the group has also alleged that Councillor B was in fact behind the request for information in the first instance. The Commissioner does not know if that is the case and it is not relevant to his decision in this instance. However the description of events at the council does explain why there was little, if any cooperation between the former working group members and Councillor B when he sought to review the council's response to the complainant's request.

The Request

10. This matter has been ongoing for a period of time, with much correspondence passing between the parties. The Commissioner has therefore not outlined all of the correspondence which has passed between the parties below, but has covered the main correspondence which is relevant to his decision on this request.
11. In a Parish Council meeting dated 28 July 2009 a statement was read out from Councillor A providing an update on the working group's negotiations. Councillor A was not present due to illness. In that statement Councillor A stated:

"I have written letters in my own name to a number of people including the Princess Royal and the Chairman of the Trustees hoping they might exert some influence on the situation. I have received encouraging replies expressing hopes that the problem might be solved amicably between ourselves but as yet we have received no invitation to a further meeting.

I have written a short article for the next issue of the Weaver which you have all seen, but I know that Councillor B was not happy with it, and he has spoken to the editor trying (I think) to prevent it being published....

The Wiltshire Times has published a letter from the Hospice which was in my view very misleading (although I don't think Councillor B tried to prevent that one being published) and I have replied to that in a letter published last week."

12. The complainant also made the following statement to the same meeting.

"I note that Councillor A has made several written contributions supporting the PC without clearly stating that he is only speaking for himself and not the PC. I believe that a majority of Winsley parishioners would consider that he is in fact speaking for the PC. When you discuss this matter later in the meeting I would be grateful for confirmation that Councillor A has been acting with the prior knowledge and approval of the whole Parish Council."

13. On 2 August 2009 the complainant wrote to the council stating that in the meeting the council had stated that the correspondence issued by Councillor A was done with the council's knowledge and approval. He asked if he could view that correspondence.
14. On 4 August the then chairman of the council responded stating that what he had said was that the council was aware of Councillor A's actions, not that it had approved them. He also stated that as the correspondence was private correspondence the council had no control over it and the complainant should ask Councillor A for it if he wished to have copies of it.
15. On 8 August 2009 the complainant responded. He said that the question he had asked the council in its meeting was whether Councillor A had been acting with the prior knowledge and approval of the council, and it was his understanding that the council had confirmed that that was the case at that meeting. He said that the council was now trying to say that that was not what it had said. Further to this, he argued that if the working group was aware of Councillor A's actions, then those actions cannot be said to be private. He also referred to statements written in the local newspaper which (he argued), suggested that the Councillor was acting in a public rather than a private role.

16. On 14 August 2009 the chairman of the council wrote to the complainant stating that

"Following discussions with the Clerk to the Council I have decided that documents produced for council deliberations can only be distributed to Councillor's. I believe this to be a procedural matter and it is not open to debate. Resolutions of the Parish Council are published in the minutes of each meeting and are posted on the village notice boards. Copies can be obtained from the Clerk to the council on payment of a fee."

17. On the same date the complainant wrote back stating

"I am pleased that you have accepted that the documents produced by (name of Councillor) will be distributed to Councillor's. Councillor's will then be able to judge whether the correspondence would have been viewed by the recipients as being from a private individual or from a person acting on behalf of the council."

18. On the 18 August 2010 the complainant wrote to the clerk of the council and stated:

"Would you please provide me with copies of the advice on the environmental impact of car parking on the playing field which was recently given to the Parish Council. I understand that there are two separate documents from two separate specialists."

19. The Commissioner does not know whether this was provided to the complainant in response to this or not, however the complainant did include a copy of this document to the Commissioner as part of the evidence of his complaint and did not raise this as an issue with him in his complaint. The Commissioner has not therefore considered this further within this notice.

20. On 21 August 2009 the complainant wrote to the clerk stating:

"I understand that the Hospice has recently written to the Clerk and indicated that they understood that the correspondence sent to them and others was written by a Parish Councillor and represented the views of the Parish Council."

If the recipient of correspondence believes that it is written on behalf of the Council or is expressing the views of the council then the writer cannot have made it clear that he is writing only as a private individual.

This, in itself, shows that the correspondence to the Hospice and others should be made available to all Councillor's so that they can judge whether it represents the views of the parish council as a whole or not."

21. On 11 October 2009 the complainant wrote to the council and requested:

"All the papers, documents and correspondence sent and received during the 2009 negotiations with the Hospice regarding the lease of the playing field, including the correspondence entered into by Councillor A, all as required by the Freedom of Information Act.

22. On the 13 October 2009 the complainant clarified his request stating:

"I hereby request that I be provided with copies of the correspondence sent by Councillor A to various parties during the negotiations with the Hospice over the lease of the playing field. This is all as required by the Freedom of Information Act and as set out in the model publication scheme adopted by the council on 1 January 2009.

I realise that the chairman of the council has stated that these were private letters but I contend that this was not the case as Councillor A was on the working group carrying out the negotiations and had not made it clear that he was acting in a private capacity only."

23. On 14 October 2009 the council responded. It stated that it was examining the Act to determine whether it was relevant or not, but that provisionally, it could say that the council was not, nor had ever been in possession of any correspondence that was written by Councillor A. In addition it was not aware of any other documentation other than that which the complainant had already been provided with copies of.
24. On 19 October 2009 the council wrote again. It stated that the Act only applied to information rather than to specific documents or paperwork, and asked him to clarify what information he was seeking specifically before it would establish whether it could provide it to him or not.
25. On the same date Councillor A wrote separately to the complainant. He stated that

"You will have received your copy of [the chair of the council's] email dated 14 October. In it he says that the Parish Council does not have copies of the correspondence that you have requested, and I can confirm that this is the case. Neither the council, not the clerk will therefore, be able to help you.

My letters were sent from my home address. They were signed by me and no one else. They were not sent on behalf of the council, neither were they requested, authorised or approved by the Council. All expenses involved in producing, printing and posting this correspondence were paid by me.

Furthermore, no member of the Council was aware of my having written the letters when they were sent. At no time has my intention to engage in this correspondence nor the letters themselves, been discussed by the Council. There is no council minute or other public record of any such discussion."

Therefore in all respects the correspondence was entirely personal between me and the recipients. In my submission my private correspondence is not within the public domain which may require disclosure."

26. On 26 October 2009 the complainant wrote back to the council stating:

"In his written statement to the council on 28 July 2009 Councillor A said:

"I have written letters in my own name to a number of people including the Princess Royal and the Chairman of the Trustees hoping they might exert some influence on the situation. I have received encouraging replies expressing hopes that the problem might be solved amicably between ourselves but as yet we have received no invitation to a further meeting."

27. This statement is in a document drawn up to inform the council of actions undertaken by the Working Group on the Council's behalf. The letters he wrote were clearly a part of the negotiations undertaken by the Working Group and are therefore covered by the requirements of the FOI Act.

Would you therefore provide me with copies of all Councillor A's correspondence, all other correspondence or emails and any other documents related to the negotiations with the Hospice."

28. On 30 October 2009 the council issued a refusal notice to the complainant claiming that section 14 of the Act applied (vexatious requests).
29. On 31 October 2009 the complainant wrote to the council and asked it to review its decision that his requests were vexatious.
30. The Commissioner understands that subsequent to this the council decided that Councillor B should review the decision to the complainant's request. On 23 December 2009 Councillor B wrote the complainant on behalf of the council. He explained that he was in the process of reviewing the requests, but in the interests of speeding that process up it would be helpful if the complainant could send to him all of the requests which he had sent to the council previously. Councillor B stated that he was concerned that some information was missing from council records which should in fact be held.
31. On 15 January 2010 the council wrote to the complainant with the result of the review. Councillor B described the searches which had been carried out, and stated that he had asked the three members of the working group to provide the council with any documents which they had had available to them during the time they were involved with renegotiating the lease. He stated that he had been unable to find any information which was not already in the public domain, and that he had not been able to find any record of any procedures adopted by the council for handling requests under the Act. He concluded the review by stating:

"The position now is that without the opportunity to examine records of the information you have requested we are not in a position to satisfy that request through this review. We have not seen any evidence that your request could be regarded as vexatious within the meaning of the Act."
32. Effectively therefore Councillor B's review had not reached a conclusion as he had not been able to find relevant information, nor obtain relevant information from members of the working group.
33. The council later reviewed its overall response to the requests. The review, dated 21 January 2010, was written by Councillor B. He wrote that when he had written to members of the working party:

"Letters to the reviewer were received written by one indicating obstruction, asserting the material did not need to be seen for the review, general prevarication and worse."

The Investigation

Scope of the case

34. On 29 January 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider whether all the documentation, letters etc. produced in relation to Winsley Parish Council's negotiations with the Hospice over the renewal of the lease on the playing field should have been disclosed to him.

Chronology

35. The Commissioner wrote to the council on 18 February 2010 indicating that a valid complaint had been received. The council responded on 26 February 2010 indicating that it did hold some information but that there was no correspondence from Councillor A as that was written privately.
36. On 27 February 2010 the council provided further documents to the Commissioner, including Councillor B's review of how the request had been handled. Other telephone calls and brief emails were exchanged following this period.
37. On 25 March 2010 the Commissioner wrote to the council asking for any further arguments and for a copy of the withheld information.
38. On 1 April 2010 the council spoke to the Commissioner on the telephone and explained some of the background to the issues the council was having in responding to the request.
39. On 8 April 2010 the Commissioner again wrote to the council asking it to provide any withheld information, and explain if it believed that some information should not be held.
40. On 20 April 2010 the council wrote back to the Commissioner referring him to its previous responses.
41. On 3 June 2010 the Commissioner wrote to Councillor A regarding his letters. He asked if the Councillor would be prepared to send a copy of some of them to him in order that he could properly establish that they were private correspondence.
42. On 15 June 2010 Councillor A responded providing an explanation of the situation and his reasons for issuing the correspondence privately.

43. On 22 June 2010 the complainant wrote to the Commissioner having received a letter from Councillor A informing him that he had provided the Commissioner with a copy of a letter he had sent to Councillor B.
44. On 5 July 2010 the complainant wrote to the Commissioner asking him to ask the council for a specific document he believed provides evidence that the correspondence was sent by Councillor A in his public role. He explained that both the clerk and Councillor B held copies of that email.
45. On 6 July 2010 the Commissioner wrote to Councillor B requesting a copy of the email.
46. On the same date Councillor B responded stating that he would send the information to the Commissioner, but wished to discuss the matter over the telephone beforehand. A telephone conversation took place and Councillor B subsequently provided the information to the Commissioner.
47. On 13 July 2010 the Commissioner asked the council for copies of the emails which it had stated had been withheld previously, together with any further relevant information which was held. On the same day the clerk responded providing some information such as minutes of relevant meetings.
48. On 26 July 2010 the Commissioner wrote to the council asking for the emails which had been referred to in previous correspondence (i.e. as noted in paragraph 35 above) the council provided that on 4 August 2010.
49. On 11 August 2010 the Commissioner asked if any of the documents which had been provided to him on 4 August 2010 had been disclosed to the complainant. The council responded on 16 August 2010 stating that they had not, but that it would provide them to the complainant if requested to do so.

Analysis

Substantive Procedural Matters

50. The Commissioner notes that the council initially refused the request for the information because it considered it exempt under section 14 of the Freedom of Information Act.

51. The Commissioner's decision however is that the information is environmental information falling within Regulation 2(1) of the Environmental Information Regulations 2004 and he has therefore considered this under these Regulations.

52. Regulation 2(1)(c) provides that –

“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 –

(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”

53. The factors referred to in (a) include –

‘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’

54. The Commissioner is satisfied that the information falls within the definition of environmental information as provided in Regulation 2(1)(c). The information relates to a change to the terms of a lease which was being negotiated between the council and the Hospice which would allow the use of a playing field as a car park. As such the new terms were likely to affect the elements of the landscape as described in Regulation 2(1)(a).

55. Given this, the refusal notice which the council issued breached the requirements of Regulation 14(3), which requires that a public authority that refuses a request to provide environmental information specifies the exception it is relying upon in the refusal notice.

Does the council hold any information?

56. The Commissioner must firstly decide whether the response provided in the council's review was adequate. He notes that the council did not state that it should not hold the information, nor did it state that the information was exempt. The council merely stated that due to the reticence of members of the working group, together with the lack of

procedures in place it had been unable to establish what the council's response should be to the request.

57. The council therefore failed to provide a valid exception to the complainant's request, as required by Regulation 14. The Commissioner's decision is that therefore that the council also breached Regulation 14(3).
58. The Commissioner considers that there are also two other questions which arise from the response of the council in this case:
 - Whether the correspondence written by the Councillor was written privately, and if it was not, whether the council should hold copies of that information, and
 - If not whether any information is in fact held by the council.

Was the correspondence issued by Councillor A public or private correspondence?

59. If the correspondence was written on a private basis then the Commissioner has no power to require the individual to provide the information to the council in order for it to be disclosed. Neither would he have the power to require the council to obtain copies of it from the individual.
60. The Commissioner finds himself in an unusual situation with this case. Given the change in personnel at the council due to the resignations highlighted above, he finds himself discussing the case with the new chair of the council, Councillor B. Councillor B's view would appear to be that the correspondence was not private and that the council should therefore hold copies of it, or at the least, that that information should be provided to the council in order for him to make a decision on its status. Councillor A has however stated to both the Commissioner and to Councillor B that he believes that the he (Councillor B) is behind the request for information in the first instance, and that as the information is his own private correspondence he refuses to provide copies to the council for that purpose.
61. The Commissioner has therefore considered whether the letters and correspondence were written privately or whether they were written on behalf of the council.
62. In making his decision he has considered all of the correspondence, statements and arguments between the parties highlighted in the paragraphs outlining the course of events above. He also contacted former Councillor A and asked him if he was willing to provide copies of

his letters to the Commissioner in order for him to consider their status. Councillor A agreed to do this, and so the Commissioner has also had the opportunity to consider some of the correspondence itself.

63. The complainant and Councillor B have a copy of an email from the former chairman on the 15 July 2009 to all Councillors as evidence that the correspondence was sent on behalf of the council. This email was sent prior to the argument beginning, and stated:

“The Working Group believes that the Parish Council should continue with a campaign to acquire a new lease for the Community Field at Murhill Lane on the same conditions as before which will prohibit the use of the field for parking at any time. In order to obtain the views of the whole electorate and hopefully support for our aims, it is proposed that posters and flyers be produced and distributed throughout the whole of Winsley Parish. In addition arrangements are already in hand for an explanatory article to be published in The Winsley Weaver.”

64. The complainant considers that this means that the information was sent on behalf of the council rather than on a private basis by Councillor A. Councillor B also stated to the Commissioner that his view is that this implies that the correspondence was issued on behalf of the council.
65. The Commissioner also notes that the thrust of the correspondence which was issued matched and combined perfectly with the aims and intentions of the working group. It therefore seems likely to him that the working group was aware of the intentions of Councillor A when he wrote his letters and articles, and that part of the reason for writing them was to support the Parish Council working group in its negotiations. The complainant's arguments (above) indicate his view that as the goals and intentions were the same, and as the council was aware of the letters, (even if it had not authorised them), then those letters should be considered public information.
66. On the counter side however, the Commissioner notes the following:
- As noted above, none of the letters were written on council notepaper, or stated that the letter was on behalf of the council. They were simply sent under the Councillor A's own name. The individual also states that responses were received addressed to him, rather than to the council.
 - Councillor A stated that he did not use council funds or stationery in order to send the letters. He used his own address, his own funds and his own stationery in order to send them.

- The letters and articles appear not to have been provided to the clerk of the council, which would have been expected if they were sent on behalf of the council.
- Councillor A's statement to the council of 28 July 2009 was made prior to the requests being received and prior to the complainant's statement to the council. It stated clearly "I have written letters *in my own name*". The Commissioner therefore considers this a clear notification to all concerned that he intended to write privately, rather than on behalf of the council.
- The complainant's written statement to the council of the same date stated "I note that Councillor A has made several written contributions supporting the PC without clearly stating that he is only speaking for himself and not the PC". It therefore seems relatively clear that the complainant understood that the letters were written on a private basis but considered that due to their nature, they should not have been, and therefore should be public information. This is not a relevant basis for such a decision to be made.
- The articles which were written in the local newspaper did use the term "we" when referring to the actions taken by the individual. However the article never went so far as to say that the individual was acting on behalf of the council. It did refer to the fact that the writer was a Councillor on the working group, and it was never made clear that the actions in question were made privately. The Commissioner therefore recognises that it was not particularly clear on what basis he was writing the articles. In any event, this particular information was published and is now in the public domain in any event.
- The council may have been made aware of the letters, and the email of the 9 July 2009 (reported above) does seem to support that argument; however that does not in itself mean that the council itself was responsible for those letters. It is possible for the council to have known about the letters without having authorised Councillor A to act in that way.
- It is also possible for the individual to have received authorisation from the council to write privately to other parties. An authorisation would not necessarily mean that that the letters were written on behalf of the council. The individual may have informed the council of his intentions in order that the council could consider whether those actions would require him to stand down from his position on the working group because of a conflict of interest.
- The lack of any written authorisation or ratification for Councillor A to have taken such action from the council in this case could however be taken to indicate as further evidence that his actions were taken independently to his role on the council.

- The Commissioner has been provided with various documents and internal emails within the council from Councillor A which clarifies that he at all times viewed his correspondence to be private and separate to the actions of the working group, and of the council.
 - The Commissioner agrees that the status of the leaflets was ambiguous and that some members of the community/the Hospice may have assumed Councillor A's comments were made through his role on the council. However the Commissioner does not consider that a lack of clarity in this is, in and of itself, reason to consider that the information is public in nature.
 - As stated, Councillor A agreed to send copies of some of the letters he had written to the Commissioner. He also provided an explanation of his actions and intentions in writing the letters to the Commissioner. The Commissioner has therefore based his decision in part on the contents of both the letters and the explanation which Councillor A provided.
 - The Commissioner has been provided with an email from Councillor A which specifically offered some Councillor's the opportunity to view the letters which he states he had sent privately. This indicates that prior to that time other Councillor's had not been party to the correspondence. The email also very clearly states that the letters were sent on a private basis.
67. Having considered all of the above the Commissioner's decision is that the letters were clearly written in a private capacity by Councillor A. Therefore the Council would not be expected to hold copies of these letters.
68. The Commissioner is not responsible for considering whether it was right or proper for Councillor A to write on the issue in a private capacity whilst also retaining his role on the working group.
69. It is also not a matter for the Commissioner to consider whether acting in this way constituted a conflict of interest or whether he should have been excluded from the working group because of it.
70. The scope of the Commissioner's decision must rest purely in whether the letters are held by the council and if not, whether they should have been. This required him to consider whether they were sent privately or not, but no further questions of the nature outlined are relevant to the Commissioner's powers. In this case, as the Commissioner finds that the correspondence was written privately then he considers that the council would not be expected to hold, or have copies of the information.

Is other information held?

71. The complainant's request encompassed all information relating to the work of the working group in addition to the correspondence issued by Councillor A.
72. The Commissioner notes that some information was provided to the complainant. He provided the Commissioner with copies of information he had received from the council when making his complaint to him. Further to this minutes were also available relating to the meetings which had taken place which mentioned the work of the working group.
73. The Commissioner also received information from the chair of the council which should have been held by the council itself, but it appears that the clerk did not retain copies of this information on her files because her response to the request was that no information was held.
74. However the clerk had also written to the Commissioner previously indicating that some further information was held. The Commissioner therefore wrote to the council pointing to various statements from both the clerk and the former chairman indicating that further information was held. In response the council provided the Commissioner with a number of documents which fell within the scope of the request. These were generally records of the council's correspondence with the Hospice, including draft copies of the new lease. The documents also included emails from Councillor B to the clerk asking for amendments to council minutes to be considered. These related to the council minutes relating to the lease negotiations and therefore also fall within the scope of the request.
75. Other documentation was also held relating to the circumstances and events, however the Commissioner does not consider that this correspondence falls within the scope of the request; it either comprises of information generated in response to the complainant's request, or to other matters only indirectly related to the lease negotiations.
76. The complainant was asked whether he had received information of this type before, and he confirmed that he had provided the Commissioner with all of the documentation which he had received in response to his request.
77. The Commissioner asked the council whether that information could be provided to the complainant. The clerk to the council responded stating that the council would be happy to provide this information to him.

78. Therefore the Commissioner finds that this information should be considered for disclosure to the complainant, and that the council should provide him with copies of it if no relevant exception applies.

Was the council's response adequate?

79. The Commissioner has considered the responses to the complainant's requests.
- The council initially provided some information but said that other information was not held, or would not be provided as it would be shared only amongst Councillor's.
 - The council stated initially that the complainant's request was vexatious, however it subsequently withdrew that finding on review.
 - The council's response after that point was that it could not respond to the complainant's request because it could not obtain the relevant information from Councillor A. In fact the council's response to this part of the request should have been that no information was held and so Regulation 12(4)(a) applied.
 - The Commissioner notes that further information relevant to the request was in fact held, and that this was not communicated to him nor a valid exception applied. The Commissioner considers that this is a breach of Regulation 14(3).

The Decision

80. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the regulations.
- It breached Regulation 5 (1) as it held relevant information which was not provided to the complainant in response to his request.
 - It breached Regulation 14(3) in that it did not provide the complainant with a valid exception when withholding that information.
 - It also breached Regulation 14(3) in that it did not state that the private correspondence issued by Councillor A was not held and therefore exempt under Regulation 12(4)(a).

Steps Required

81. The Commissioner requires the public authority to take the following steps to ensure compliance with the Regulations:
 - The council should consider the information which it holds that falls within the scope of the request for disclosure to the complainant.
82. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

83. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

84. 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 8th day of November 2010

Signed

**Andrew White
Group Manager**

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

Legal Annex

Regulation 12 provides that:

Regulation 12(1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if –

- (a) an exception to disclosure applies under paragraphs (4) or (5); and
- (b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

Regulation 12(2) A public authority shall apply a presumption in favour of disclosure.

Regulation 12(3) To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with regulation 13.

Regulation 12(4) For the purposes of paragraph (1)(a), 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 provides that:

Regulation 14(3) 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; and
- (b) the matters the public authority considered in reaching its decision with respect to the public interest under Regulation 12(1)(b) or, where these apply, Regulations 13(2)(a)(ii) or 13(3).