

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

Decision notice

Date: 19 September 2011
Public Authority: Suffolk County Council
Address: Endeavour House
8 Russell Road
Ipswich
Suffolk
IP1 2BX

Decision

1. The complainant requested information about a planning application, including correspondence between a specified council department and the applicant or his agent. The public authority disclosed the information it held, but the complainant remains sceptical that all the information has been disclosed. The Commissioner finds that, on the balance of probabilities, Suffolk County Council does not hold any information beyond that which has been disclosed to the complainant.
2. The Commissioner's decision is that Suffolk County Council (the council) has correctly applied the Environmental Information Regulations 2004 (the EIR) to the complainant's requests and has disclosed all the information, requested by the complainant, which it holds.

Request and response

3. On 10 August 2010, the complainant wrote to Suffolk County Council (the council) and requested information in the following terms:

"Request:

I would like to make the following two FOI requests regarding the Planning Application SE/09/1421 and subsequent Development Control Committee hearing that took place on 21st July 2010: -

Request No 2 – I would like to request a copy of all correspondence (including all letters, notes, e-mails & memo's) regarding this application from the Minerals and Waste Department to and from: -

a) The applicant and/or applicants agents

b) Statutory Consultees

c) Other SCC departments"

4. The council responded on 25 August 2010. Its response indicates that the information it held was disclosed.
5. Following an internal review the council wrote to the complainant on 24 October 2010, stating that further information had been located and this was disclosed.

Scope of the case

6. On 24 October 2010, the complainant contacted the Commissioner to complain about the way his request for information had been handled. He explained that he was dissatisfied with the response he had received, and believed that further information was held by the council, which had not been disclosed to him.
7. Specifically, he refers to the item titled Request No 2, stating that his request was for "all e-mails (to and from) the Suffolk County Council Minerals and Waste Planning Manager and the applicant (and applicant's agent)" [in the specified planning application] and that he had only been supplied with (or seen) copies of five separate emails. He believed that more correspondence would necessarily exist between these parties and that these were being withheld.
8. The Commissioner considers the complaint is that the council has not disclosed all the information it holds, described in the request in respect of part a) of Request No 2, namely:

all correspondence between the Minerals and Waste Planning Manager and the applicant, and/or the applicant's agents.

Reasons for decision

9. Regulation 5 of the EIR states that:

"[...] a public authority that holds environmental information shall make it available on request".

10. The Commissioner has considered the complainant's arguments for believing that the council holds more information which it has not disclosed. Those arguments may be summarised as follows:

- [1]** The Minerals and Waste Planning Manager (the manager) made frequent use of email and there is considerable correspondence between him and other parties, including objectors and other interested parties, because this was a complex planning application. It follows that there would have been similar, substantial, correspondence between the manager and the principals (the applicant and the applicant's agent) in the matter. This is not reflected in the small number of emails disclosed to him.
- [2]** Information disclosed after the council's internal review is considered by him to be potentially damaging to the council, including letters to councillors [from the applicant's agent], which he describes as *"highly misleading"*. He is suspicious that this information was not disclosed initially, and that it was withheld due to its potentially damaging nature. This gives rise to further suspicion that other information remains withheld because it is potentially damaging to the council.
- [3]** One of the main partners to the application, the Renewable Zukunft Company (RZ), went into liquidation during the application process, but this information was not made public. The complainant asserts that the manager would have been made aware of the liquidation of this company and, among other things, his request seeks to learn when this happened.
- [4]** The involvement of RZ is crucial in that it was to be the supplier of the plant and equipment for the waste processing plant [an 'anaerobic digester'] which is the subject of the application, and it is a 50% financial funder of the project. The complainant produced the cover of a document which states that the application was submitted *"in association with Renewable Zukunft"*. The specifications of the plant in the application relate to RZ' equipment and were supplied by them.
- [5]** A discrepancy in one email, which lacks an automated 'signature' which is present in other emails from the same party, suggests that the email may have been edited and is therefore incomplete. He suspects that editing of other correspondence may have taken place.
- [6]** Changes to the specification of the input waste material between what is specified in the planning application, and what is described in the report to the planning committee, suggests that correspondence will exist which explains these changes.

[7] A copy of a report from the manager to the development control committee, sent to St Edmundsbury Borough Council (a statutory consultee in the planning process) differs from the copy disclosed to him and held in the council's planning file.

11. The majority of these arguments were put to the council, and its responses are summarised using the same numbering, below:

[1]

12. The council confirmed that all the information it holds in relation to the complainant's request has been provided to him. Searches had been conducted which were sufficiently wide, going beyond simply searching the relevant planning file, and included a search of the mailboxes of all associated staff (including the manager) and a joint Minerals and Waste Department mailbox.
13. It confirms that it is reasonably certain that draft documents and general information-sharing emails were deleted prior to the receipt of the request, in accordance with its relevant data protection and document retention policies. The Commissioner has received a copy of the council's policy document. The council confirms that this policy is based on 'best practice' to ensure outdated and superseded information is deleted once a decision is recorded, or a final version of a document produced.
14. Not all documents are required to be kept on the planning file, those which are material to the decision and those designated a 'corporate record' are retained, but routine 'admin' or information-sharing correspondence and emails need not be retained on the planning file. The complainant, aside from having access to the published version of the planning file on the council's website, has also visited the council's offices and been given unrestricted access to the physical planning file. [The complainant has confirmed that he has visited the council and obtained access to the planning file].
15. The Commissioner is therefore satisfied that appropriately-directed searches have been conducted in the locations where the requested information might be expected to be held. Given that the complaint focuses on emails to and from the manager, a search of his email mailbox should locate any material held by the council and, if emails have been copied to the planning file for retention as a record, and subsequently deleted from the manager's mailbox, the searches conducted (and access already obtained by the complainant) will have located any emails so-held.

16. The complainant's assertion that more emails must exist, because a greater number of emails to other parties were sent, has no logical basis and is not one which the Commissioner can support, particularly in the face of the council's evidence to the contrary.

[2]

17. In light of the council's response to point [1], above, the Commissioner does not find any support for the complainant's suspicion that information was being concealed because it was 'potentially damaging' to the council. That a letter was disclosed at internal review is not, in itself, grounds for reasonable suspicion, and the Commissioner does not think that, even if the letter were to be considered 'highly misleading' (which is not conceded), it is clear why this might reflect on the council, rather than on the applicant's agent who produced the letter.
18. The Commissioner consequently does not find this ground sufficient to lend weight to any 'balance of probabilities' argument, that more information is likely to be held.

[3] and [4]

19. The council explains that the Renewable Zukunft company was not the applicant in this case, and the Commissioner has seen no evidence from the complainant which suggests that RZ was a formal party to the application, nor that, as the complainant asserts, it held a 50% financial stake in the application. (The document provided by the complainant gives the name of the applicant 'in association with' Renewable Zukunft, which is not sufficient to support the assertions made by the complainant). The council has explained that planning applications are made with supporting information from third parties and this does not imply that they are co-applicants. The council explains that the liquidation of RZ is immaterial to the determination of the planning process, in other words, the liquidation of that company would not have a bearing on whether or not the planning application should be approved.
20. The council observes that the planning would be granted on the basis of technical information provided and if, in the event, a different technical solution was to be installed, the onus would be on the applicant to apply for a change to the planning consent to any extent necessary. In short, the liquidation of the supplier of the plant is not the council's concern and is, rather, the applicant's problem. The Commissioner accepts therefore that there is no 'business reason' why the council might need to be informed of RZ' liquidation or, perhaps more relevantly, would have any need to retain that information in its records.

[5]

21. The Commissioner observes that the email which does not contain an automated signature was not one which would be caught by the description in the disputed part of the request, as it was not sent to, or received from the applicant or their agents, by the manager. It is therefore, again, only circumstantial evidence from which the complainant has drawn conclusions as to whether information has been edited. The matter was nevertheless put to the council, which has confirmed that the email, as disclosed to the complainant is 'as per the file copy'; in other words, this is the information it holds in its records. The council explains further that email signatures of this kind may, or may not be appended depending on whether or not the emails are auto-generated. It comments that other items of correspondence in the planning file viewed by the complainant do not have formal signatures attached.

[6]

22. The council explains that information about the changes in feedstocks is publicly available in the planning files which the complainant has had access to. The complainant subsequently requested further access to these files and confirms that he is now satisfied on this point.

[7]

23. The council enquired of St Edmundsbury District Council (SEDC) and has learnt that a draft copy of the formal final report was sent to SEDC which differs slightly in format to the final report available on its website. It confirms, however, that the main body of the report is identical to the version it published on its website.

24. The differences are explained as being because it appears that a final draft of the report was emailed to SEDC by a member of the council's staff, prior to its submission to the council's Development Control Committee and subsequent minor formatting changes and corrections appear to have been undertaken by that committee, prior to publication on the council's website. Those changes are:

- the deletion of an internal checklist, routinely removed prior to publication and of no material relevance to the report;
- the addition of a report number. This is assigned when the report is circulated to the committee members;
- a heading on page 37 of the document is incorrectly labelled as a numbered paragraph (number 166) in the draft version. This minor

formatting error is assumed to have been corrected when the report was being prepared for circulation to the committee members;

- an inconsistency in the page numbering in the document footer is attributed to a slightly different format in the footer between the draft and published versions, which resulted in a page 'spilling over' to the next page.
25. The council confirms that it is not normal practice to retain draft copies of reports, and the version held by SEDC is not retained by the council, albeit the material content of the two reports remains the same. The council's enquiries in relation to the discrepancy between these two versions of the document have not led it to locate any new information held in its records, pertinent to the complainant's request.

Summary of conclusions

26. Having assessed the complainant's evidence, the Commissioner considers that the majority of his arguments draw inferences from circumstantial evidence which doesn't support the complainant's conclusions. As the normal standard of proof required is the civil standard of the 'balance of probabilities' the Commissioner does not consider that the complainant's arguments assist his claim that it is more likely than not that the council holds more information. In contrast to this, the council's explanations appear reasonable and rational, and adequately explain why, contrary to the complainant's belief, no further information is held by it.
27. The Commissioner finds that, on the balance of probabilities, the council does not hold any information described in the request which has not already been disclosed to the complainant.

Right of appeal

28. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

29. 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.
30. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Signed

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