

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

Decision notice

Date: 14 August 2012

Public Authority: Newcastle City Council
Address: Civic Centre
Barras Bridge
Newcastle upon Tyne
NE99 2BN

Decision (including any steps ordered)

1. The complainant requested information relating to a planning matter. The council provided some information and said that it did not hold other information. The complainant disputed that this was the case.
2. The Commissioner's decision is that on the balance of probabilities, the council did not hold any further information.
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 14 August 2011, the complainant requested information from the council in the following terms:

"1. Telephone calls from Planning officer mobile and desk land line April to July 2011 to client/builder/architect. I understand there may be problem as you explained that requests by the press have been made to you.

2. Date and time of full desk top planning assessment undertaken by planning officer.

3. Works diary of P/O, times and dates regarding all meetings with Chair/Vice planning Councillor [name]. Client/Builder/Architect.

4. Data: times and dates when letters and drawings were put onto application web site as agreed by [name] at our meeting. As I explained a drawing had been put onto the site within 3 to 4 working hours, which your legal representative felt was a very good service provided by the builder and I agreed. But when [name] explained that all information regarding changes to drawing must go through the P/O, via client/builder/architect, then sent back to the P/O before being put onto the site, three to four hours working time – to say this is a very good service is an understatement. The drawing in question was then removed from the application site some weeks later and a new drawing inserted, I am unsure what has taken place here and concerned as to legal requirements regarding data being put onto and taken off from the application site. I do have a copy of the drawing in question shown to [name] at our meeting but feel times and dates are critical on this point.

5. Planning Officer records of any other formal complaint/appeal concerning this officer over the last three to four years”.

5. The council responded on 19 September 2011. It gave the following responses:
 - In relation to question 1, it said that it did not hold the requested information
 - In relation to question 2, 3 and 4 the council provided a response.
 - In relation to question 5, the council cited regulation 13(5)(a) of the EIR and said that it would neither confirm nor deny whether this information existed.
6. Following an expression of dissatisfaction from the complainant, the council completed an internal review (date unclear). This upheld its previous response.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled as follows:
 - In relation to points 1 and 2, he does not accept that no recorded information was held
 - In relation to point 3, the complainant is unhappy because in the council's response dated 19 September 2011, it refers to a "Further meeting to objectors property with [name] and the case officer was 15/6/11", however, he has alleged that in subsequent correspondence, the council has said that this meeting did not happen.

- In relation to point 4, the complainant believes that the council has incorrectly asserted that the drawing referred to in the request was not removed from the website and replaced with a new one. He therefore believes that it would hold information showing the dates when this change occurred.
8. For clarity, the complainant told the Commissioner that he does not wish to pursue a complaint about point 5 of his request.

Reasons for decision

Is the information environmental?

9. Information is environmental if it meets the definition set out in regulation 2 of the EIR. Regulation 2(1)(c) covers any information on plans or activities affecting or likely to affect the elements of the environment, one of which is land. The requests in this case relate to plans for an extension to a property and the Commissioner therefore accepts that the request was correctly handled under the EIR.

Regulation 5(1) – What recorded information was held?

10. Regulation 5(1) provides a general right of access to environmental information held by public authorities. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. He will also consider the actions taken by the authority to check that the information was not held and he will consider if the authority is able to explain why the information was not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held. He is only required to make a judgement on whether the information was held "on the balance of probabilities".¹
11. In relation to point 1, the complainant alleged that this information was held. When questioned by the Commissioner, the council maintained its position that it did not hold this information at the time of the request. It said that an ICT specialist had searched the phone system. The council explained that it only held details of numbers phoned for a limited

¹ This approach is supported by the Information Tribunal's findings in *Linda Bromley and Others / Environment Agency* (31 August 2007) EA/2006/0072

period of time. It added that the personal phones are not set up to record incoming calls. Based on this response, the Commissioner was satisfied that the council had made reasonable checks to ensure that it did not hold this information.

12. In relation to point 2, the council said that specific dates of desktop assessment are not held. The council explained that this is not required for such applications as it is essentially assessing something at a desk. The application itself was validated on 29 April 2011 however the council has never held information showing the date when it was passed to the officer in question as this is not a requirement. Based on this response, the Commissioner accepts that it is not part of the council's processes to record information of the nature requested and the information has never been held.
13. In relation to point 3, the council was able to simply clarify that the meeting did take place as originally said. The later reference to the meeting not having taken place was an error for which the council wishes to convey its apologies for any confusion caused.
14. In relation to point 4, the council provided the complainant with a print off from the website showing the dates when the information had been placed onto the website. The complainant disputes that this is a complete list because he believes that an initial drawing was removed and replaced by a new one, and that initial change is not recorded on the website. The complainant explained to the Commissioner that he had printed off the drawing he had seen at the time and he was concerned that the council's actions in removing the drawing had been inappropriate since his understanding is that it must not remove from the website any information about changes to the plans.
15. The council has made it clear that in fact, there was only one plan that replaced the original and this took place on 19 May 2011. That is shown on the information already provided to the complainant. The Commissioner asked the complainant to provide a copy of the drawing that he alleged had been removed from the website. When the council considered that information, it said that it was not a formal drawing representing a change to the plans, as appears to have been the understanding of the complainant. It is merely a standard Ordnance Survey map. That information has also never been removed from the website. There was a slight change of address, which could account for the reason that the complainant's belief that it had been removed, however it is still in fact on the website. For ease of reference, it can be accessed here:

<http://publicaccess.newcastle.gov.uk/online-applications/applicationDetails.do?activeTab=map&keyVal=LJKU1DBSAP000>

16. In view of the above, the Commissioner's view is that the council did not hold the information requested by the complainant. It is clear to the Commissioner that the complainant's concern is clearly focused on whether the council had appropriately recorded all changes to the drawings on the website. The request appears to have arisen as a result of a misunderstanding over the nature of the information in dispute. The council does not hold any information showing that the original plan was replaced by a new one, other than that already provided. What the complainant considered was a formal plan was in fact only a standard map.

Right of appeal

17. 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

18. 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.
19. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF