

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

**Date:** 27 February 2013

**Public Authority:** Suffolk Coastal District Council  
**Address:** Melton Hill  
Woodbridge  
Suffolk  
IP12 1AU

**Decision (including any steps ordered)**

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1. The complainant requested a paper showing the calculation behind a specified number of new dwellings which Suffolk Coastal District Council (the 'Council') had undertaken to produce during a meeting with a Planning Inspector, at which the complainant was present. The Council informed the complainant that it had instead provided the Planning Inspector with an additional explanatory paper, which the Inspector confirmed had addressed the issues raised. The Council confirmed it had no plans to produce any further documents.
2. The Information Commissioner's decision is that, on the balance of probabilities, the Council does not hold any further information other than that it has previously provided to the Inspector and to the complainant. The Council, however, failed to handle this request properly under either the FOIA or the EIR, and failed to recognise the request as being for environmental information. He does not require the Council to take any steps.

**Background**

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3. The complainant represents a local action group, Save Trimley Against Growth, ('STAG') and attended many of the hearings associated with the issue of housing provision in the area.

4. The complainant corresponded regularly by email with the Council on STAG matters and made requests, such that the Council had instigated one of its senior officers to act as a sole point-of-contact. The complainant continued to copy in other officers and Councillors and occasionally used an inappropriate tone, so the Council, after having advised it would do so, insisted that all future correspondence from the complainant should be addressed to the single point-of-contact and submitted via the post only.

## **Request and response**

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5. On 15 August 2012 the complainant wrote to the Council and requested information in the following terms:

*"At [the] Planning Inspector[’s] Exploratory Meeting on 12 July [the Council] agreed to produce "a paper showing the calculation behind the 7,590 new dwellings identified by the Council as the full and objectively assessed needs for the District.*

*Therefore, in terms of Freedom of Information legislation would you please supply me with a copy of this paper."*

6. The Council responded on 20 August 2012. It stated the following:

*"I understand that you made a FOI request via email on 15 August 2012. We are satisfied that the information already provided is complete and there are no plans to produce any further documents.*

*As you are aware however all correspondence from you, including FOI requests, should be made by post to me. Please can you therefore ensure that any future such FOI requests are submitted in this format."*

7. On 21 August 2012 the complainant emailed the Council asking it to confirm on what basis it was withholding the requested information. He emailed the Council again on 23 August 2012 asking it to deal properly with his request. This correspondence should have been recognised and handled as a request for an internal review by the Council; however due to the complainant having corresponded by email the Council responded with an automated email response which said:

*"As you are aware, as set out in detail in my letter dated 13 June 2012, the Council will no longer respond to correspondence that you send via email. Your email has therefore been automatically deleted."*

## Scope of the case

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8. The complainant contacted the Information Commissioner (the 'Commissioner') on 29 August 2012 to complain about the way his request for information had been handled. The complainant originally submitted a complaint to the Commissioner about two requests (dated 15 and 21 August 2012).
9. He asked the Commissioner to consider whether the Council had contravened FOIA legislation by refusing to accept FOIA requests which have been made by legitimate email means and whether it was illegally destroying email correspondence relating to those requests. He also raised concerns about whether the Council had used "*delaying tactics*" to ensure that responses to postal FOIA requests would post-date a deadline for submissions by STAG and others to a Public Examination by a Planning Inspector.
10. The Commissioner initially made some enquiries with the Council and obtained copies of the key correspondence which had led it to instigate a specified means and approach for the complainant to correspond with it. Having done so the Commissioner formed a view that, in the circumstances of this case, channelling the complainant's correspondence through one point-of-contact was reasonable; however, it was not appropriate for the Council to insist that the complainant had to submit requests by post. The Commissioner has found that the Council breached regulation 5(1) in refusing to accept a request made my email.
11. Having investigated what led to the Council instigating its narrowed approach to handling the complainant's requests that way, the Commissioner wrote to the complainant on 19 December 2012 The Commissioner noted, after the Council had advised the complainant on 13 June 2012 it would not accept emailed correspondence, that the Council's single point-of-contact deleted the complainant's emails; however, it continued to respond to all his posted correspondence.
12. The Commissioner's letter referred to the requests of 15 and 21 August 2012; however, on 8 January 2013, the complainant confirmed that he no longer wished to pursue his complaint in relation to the request of 21 August 2012. He did not make any further reference to the Council's treatment of that request, so the Commissioner has not considered the matter beyond his initial advice to both parties. Further, the Council responded to the request of 15 August 2012 by 20 August 2012, well within the 20 working days timeframe afforded by the legislation.

Consequently this notice relates only to the complainant's request of 15 August 2012.

13. The Commissioner has investigated whether, on the balance of probabilities, the Council holds any further information relevant to the request than has already been disclosed.

### **Reasons for decision**

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14. Having received notification of the scope of the Commissioner's investigation, the complainant wrote further to the Commissioner on 8 January 2013 with the following viewpoint:

*"...The Council will claim that it provided a document that was acceptable to the Planning Inspector and that there is therefore no need to produce the document requested by me. However these two documents are completely different entities and should be viewed separately. In addition, 'acceptance' of the second document by the Planning Inspector does not invalidate the relevance or significance of the first document, and means only that the Council provided sufficient information for the Planning Inquiry to go ahead."*

*"...What matters is that a senior Council official made a commitment to a Planning Inspector to produce a specific document within a specific deadline. This means that either (a) the document existed on 12 July 2012 or (b) information existed on 12 July 2012 to enable its production within two weeks. It is therefore a reasonable expectation that the Council prepares and discloses this document to me as a result of my FOIA request."*

15. That same day the Commissioner spoke to the complainant and advised him that if the requested information does not exist, the Council is not required to create it in order to respond to a request.

### ***Is the requested information environmental?***

16. The Commissioner has first considered whether the requested information in this case constitutes environmental information, in which case the correct access regime is the EIR.
17. Environmental information is defined in regulation 2 of the EIR as :

*"any information in written, visual, aural, electronic or any other material form **on** ...":*

- the state of the elements of the environment, such as air, water, soil, land;
  - emissions and discharges, noise, energy, radiation, waste and other such substances; and
  - measures and activities such as policies, plans, and agreements affecting or likely to affect the state of the elements of the environment.
18. The Information Commissioner's approach is to interpret "any information... on" fairly widely. He does not consider it necessary for the requested information itself to have a direct effect on the environment in order for it to be environmental information. It will usually include information concerning, about, or relating to measures, activities and factors likely to affect the state of the elements of the environment.
19. Having considered the nature and context of the request, and viewed the information which was submitted to the Planning Inspector in this case, the Commissioner has concluded that it constitutes environmental information as defined by regulation 2(1)(c) of the EIR. This is because the information in this case is on a plan which will affect several of the elements and factors referred to in regulations 2(1)(a) and (b). . The correct access regime was, therefore, the EIR.

**Regulation 5(1) / 12(4)(a)**

20. Regulation 5(1) of EIR states that:

*"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."*

21. Regulation 12(4)(a) provides an exception from the duty to disclose where the information is not held. The task for the Commissioner here is to reach a conclusion on whether the Council did hold the information requested at the time of the request and, therefore, whether regulation 12(4)(a) did apply.
22. In cases such as this, where there is some dispute as to whether a public authority holds information falling within the scope of the request, the Commissioner has been guided in his approach by a number of Tribunal decisions which have used the civil standard of the balance of probabilities, ie whether on the balance of probabilities the Commissioner is satisfied that no further information is held. In deciding where this balance lies the Commissioner will take into account the scope, quality, thoroughness and results of the searches carried out by

the public authority, as well as considering, where appropriate, any other reasons offered by the public authority to explain why the information is not held.

23. In this case the Council submitted a comprehensive response together with copies of, or weblinks to, all the associated publically available documentation. It explained that it sets the Local Development Framework and that the pre-submission draft Core Strategy for the planning framework for the district for 2010-2027 was submitted for independent examination in May 2012, with public hearings held in October and November 2012.
24. The Council commented that the complainant's request for a paper showing the calculation behind the 7,590 new dwelling identified by the Council as the full and objectively assessed housing needs ('FOAHN') for the district does not consist of an "equation" or "calculation". It is instead a staged process which includes some judgments which must be made about the district's potential for economic growth and is therefore not a formulaic approach. The Council pointed the Commissioner to its staged approach in reaching a FOAHN of 7,590 set against the Regional Spatial Strategy, which is publically available on its website. It highlighted its published Core Strategy document<sup>1</sup>, which sets out the figures.
25. It provided the Commissioner with copies of correspondence between it and the Planning Inspector, again available on its website, highlighting that at the Exploratory Meeting held in public on 12 July 2012<sup>2</sup>, at which the complainant was present, the Planning Inspector had queried the basis of the 7,590 dwellings. In 2010 the Council had obtained a full forecast of housing needs from a study carried out by Oxford Economics which was for 11,000 dwellings, but said that this figure did not take account of the physical or natural constraints which may affect land in the district, and thereby, its ability to actually deliver and accommodate that many dwellings.
26. The Inspector queried what the FOAHN was and the need for it to comply with both the National Policy Planning Framework and the Regional Spatial Strategy. Notes of the hearing are also available

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<sup>1</sup> <http://scdc.onesuffolk.net/assets/documents/ldf/e/presubmissioncorestrategy.pdf>

<sup>2</sup> <http://www.suffolkcoastal.gov.uk/assets/documents/ldf/examination/phm-em-notes-v4.pdf>

online<sup>3</sup>. At this meeting, and in response to the Inspector's question, the Council confirmed it had taken the 7,590 dwellings from the Regional Spatial Strategy, but undertook to provide further information to demonstrate how the Regional Spatial Strategy (7,590) and the Oxford Economics (11,000) figures related to the requirements of the National Policy Planning Framework.

27. On 6 August 2012 the Council responded to this point by sending the Inspector a paper, which is available on its website<sup>4</sup>. It drew the Commissioner's attention to content from this paper which explain how the FOAHN of 7,590 dwellings was reached and also what housing need is necessary to meet the requirements of the National Policy Planning Framework, stating *"Therefore it is not a 'calculation' or 'equation' to meet the direct request of [the complainant], but is something different which nonetheless explains the Council's position and which the Inspector accepted as meeting the question which he raised on 12 July."*
28. The Council advised that the Inspector had gone on to consider its Local Development Framework Strategy at a number of hearings, and that it had informed the hearings with explanatory statements, again available online<sup>5</sup>.
29. In coming to a conclusion in this case the Commissioner has taken into account the explanations provided by the Council, the complainant's views, as well as being guided by the Tribunal decision which determined the approach to be taken in this type of case. The Commissioner considers that, on the balance of probabilities, the Council does not hold the requested information and that it instead responded to the Planning Inspector's enquiries via a publically available paper which the Inspector accepted. The Commissioner also finds that regulation 12(4)(a) applied in this case.

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<sup>3</sup> <http://www.suffolkcoastal.gov.uk/assets/documents/ldf/examination/phm-em-notes-v4.pdf>

<sup>4</sup> <http://www.suffolkcoastal.gov.uk/assets/documents/ldf/examination/council-to-inspector-6th-august.final.pdf>

<sup>5</sup> <http://www.suffolkcoastal.gov.uk/assets/documents/ldf/examination/council-to-inspector-6th-august.final.pdf>

### ***Procedural breaches***

30. In this case the Council failed to issue the complainant with a proper refusal notice in breach of regulation 14 of the EIR, which would have advised the complainant that the information he had requested was not held and so regulation 12(4)(a) applied. The Council breached regulation 5(1) of the EIR by its refusal to deal with a request made by email. It also failed to recognise the complainant's request for an internal review in breach of regulation 11 of the EIR. It acceded that it should have provided the complainant with a more detailed explanation than was included in its response to the request of 20 August 2012, that it should have handled the request under the EIR and issued a proper refusal notice.

### **Other matters**

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31. The complainant asked the Commissioner to consider his assertion that the Council was deliberately withholding and or destroying information relevant to his request. The Commissioner is not able to deal with this matter in a decision notice as it is not an issue which falls under the remit of such a notice. Should the complainant, however, wish the Commissioner to consider whether the Council has committed an offence under regulation 19 (offence of altering records with intent to prevent disclosure) he should contact the Commissioner again.
32. Whilst the Commissioner accepts that the Council can ask the complainant to write by post and only to a single person, requests made by email and addressed to anyone else within the Council are still valid and cannot be ignored. The Council has breached regulation 5(1) of the EIR in this regard.



## Right of appeal

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33. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

34. 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.
35. 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 .....**

**Jon Manners**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**