

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 17 October 2013

Public Authority: West Dorset District Council

Address: South Walks House
South Walks Road
Dorchester
Dorset
DT1 1UZ

Decision (including any steps ordered)

1. The complainant has requested information relating to building works carried out at a specific property. West Dorset District Council provided the complainant with the requested information and confirmed that no further relevant information was held.
2. The Commissioner's decision is that West Dorset District Council:
 - wrongly handled the request under the Freedom of Information Act 2000 (FOIA) and in doing so, breached regulation 5 of the EIR;
 - provided the complainant with all the information it holds which falls within the scope of the request and complied with regulation 5(1) of the EIR.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 12 October 2012, the complainant wrote to West Dorset District Council (the "council") and requested information in the following terms:

"I make a formal request under the Act in respect of the property known as [DETAILS REDACTED].

The request is made for information during which time the council owned the said property from 1984 until it was sold to a [DETAILS REDACTED] some years thereafter.

The request is for all information related to building works carried out by the council or its tenants at the property during the period.

The information is for

- 1. Orders for works*
- 2. Plans of proposed works*
- 3. Internal memos, minutes and communications relating to works-proposed or actual*
- 4. Invoicing for works*
- 5. Payment of works*
- 6. Applications for planning and listed building consents for works*
- 7. Approvals for planning and listed building consents for works*
- 8. Site visits and any notes of the visits by council employees or agents*
- 9. Reports commissioned by the council or its agents for reports - structural / condition on the property - at the time of purchase by the council in 1984 or before*
- 10. CPSE inquiries or equivalent obtained by the council by its solicitors or agents at the time of purchase by the council in 1984 or before*
- 11. Communications with contractors carrying out works*
- 12. Communications with other council departments eg Highways in relation to the use of a crane to effect structural works*
- 13. Any searches carried out at the property on file at the council or its agents."*

5. The council responded on 30 October 2012. It provided the requested information and confirmed that it had disclosed all the relevant information that was held.
6. Following an internal review the council wrote to the complainant on 1 March 2013. It stated that it was maintaining its original position that all the requested information had been provided.

Scope of the case

7. On 4 March 2013 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. The Commissioner confirmed with the complainant that his investigation would consider whether the council has provided all the relevant information it holds. The complainant raised concerns that the council had destroyed information falling within the scope of the request. The Commissioner advised the complainant that this would only be an issue if information had been destroyed after their request for information had been received. The Commissioner has considered whether there is any evidence that this happened.

Reasons for decision

Is it Environmental Information?

9. The Commissioner has considered whether the council correctly handled the request under the Freedom of Information Act 2000 (FOIA) or whether the requested information constitutes environmental information as defined by the EIR.
10. The Commissioner notes that the request relates to decisions regarding orders for works to be carried out at a specific building. He has considered whether this information can be classed as environmental information, as defined in Regulation 2(1)(a)–(f), and he has concluded that it can for the reasons given below.
11. In this case the subject matter of the withheld information relates to land/landscape and any advice could determine or affect, directly or indirectly, policies or administrative decisions taken by the council.
12. The Commissioner considers that the information, therefore, falls within the category of information covered by regulation 2(1)(c) as the information can be considered to be a measure affecting or likely to affect the environment or a measure designed to protect the environment. This is in accordance with the decision of the Information Tribunal in the case of *Kirkaldie v IC and Thanet District Council* (EA/2006/001) (“Kirkaldie”).
13. In view of this, the Commissioner has concluded that the council wrongly handled the request under the FOIA.

Regulation 5 – duty to provide environmental information on request

14. Regulation 5(1) provides that a public authority that holds environmental information should make it available on request.
15. In this case, the council provided the complainant with information and confirmed that no further information was held. The complainant has disputed this and claims that the council has either covered up the fact that more information is held or has destroyed relevant information.
16. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
17. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
18. In order to assist with this determination the Commissioner asked the council a range of questions which are reproduced along with the associated responses from the council below.

What searches were carried out for information falling within the scope of the request and why would those searches have been likely to retrieve any relevant information?

19. The council confirmed to the Commissioner that the following searches were undertaken:
 - A search of the paper property files held at the council's dedicated external records store;
 - A search of the council's property records database – "Technology Forge";
 - A search of the council's internal computer held property records files;
 - A search of the council's microfiche records;
 - A search of "Sharepoint", the council's documents management system for scanned files held within the appropriate retention policy timescales.
20. The council explained that any information held relating to the property identified in the request would have been identified via these searches.

If searches included electronic data, please explain whether the search included information held locally on personal computers used by key officials (including laptops) and on networked resources and emails.

21. The council confirmed that personal computers and laptops would not have been in use at the time period to which the request relates. It explained that, where personal computers and laptops are in use, documents are saved directly to network drives. It confirmed that the searches it had conducted (see above) would have been sufficient to identify any relevant, held information.

If searches included electronic data which search terms were used?

22. The council confirmed that the address of the property, the postcode, the relevant tenant details, the internal property file number and Unique Property Reference Number (UPRQ) were used as search terms.

Was any recorded information ever held relevant to the scope of the complainant's request but deleted / destroyed?

23. The council confirmed to the Commissioner that no relevant information had been deleted or destroyed subsequent to the request being received. Pointing to the historic nature of some of the requested information, the council explained that the relevant property file would have been destroyed at the end of its retention year (in December 2008).

What does the council's formal records management policy say about the retention and deletion of records of this type? If there is no relevant policy can the council describe the way in which it has handled comparable records of a similar age?

24. The council confirmed that there was no formal records management policy in place during the time period (1984 onwards) referred to in the request. It explained that it now had a formal records retention policy in place. This requires that Property Disposal (legal documents) are held for a 7 year period from disposal and Property Disposals (particulars of sale and other non legal information) are similarly held for 7 years from disposal of property. The council confirmed that files relating to properties owned by itself are scanned onto Sharepoint and, as part of the process of scanning current files, historic paper files have been destroyed in accordance with the retention policy.

Is there a business purpose for which the requested information should be held?

25. The council confirmed that, beyond the retention policy, there is no current requirement for the information to be held.

Are there any statutory requirements upon the council to retain the requested information?

26. The council confirmed that there are no such requirements, beyond those identified in its records retention policy.

27. In addition to its responses to the above questions set by the Commissioner, the council also provided a further explanation of the extent of relevant information held broken down by each element of the request. In each instance, the council provided the Commissioner with an explicit confirmation that all the relevant held information had been disclosed to the complainant.

28. Having considered the council's submissions, he can find no evidence that any relevant information was deleted or destroyed after the request had been received, or that further information beyond that disclosed to the complainant is held. As the complainant has not provided any evidence which contradicts this, the Commissioner has concluded that, on the balance of probabilities, the council has disclosed all the relevant information which was held at the time of the request.

29. The Commissioner has accordingly found that the council complied with regulation 5(1) of the EIR and he does not require it to take any steps.

Right of appeal

30. 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

31. 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.
32. 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
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