

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 30 October 2013

**Public Authority:** New Milton Town Council

**Address:** Town Hall  
Ashley Road  
New Milton  
Hampshire  
BH25 6BZ

### **Decision (including any steps ordered)**

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1. The complainant requested information from New Milton Town Council ("the council") about its decision to commence legal proceedings. The council provided some information in response to his request. The complainant then asked the Commissioner to consider whether any further information was held.
2. The Commissioner's decision is that, on the balance of probabilities, no further information is held by the council. However, the council breached regulation 5(2) of the EIR by failing to provide a valid response to the complainant within 20 working days.
3. The Commissioner does not require any steps to be taken.

### **Request and response**

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4. On 14 January 2013, the complainant wrote to the council and requested the following information:

*"Under the FOI can you please supply the following information for the actions against [redacted names] and [redacted name].*

1. *Copies of the minutes when these cases were discussed and when decisions were taken to instruct your Solicitor to commence legal proceedings.*
2. *Copies of the instructions.*
3. *The costs to the taxpayer.*

- 4. If there are no Minutes or documented evidence relating to these decisions, please explain why.*
- 5. Please include losses to the ratepayer for the second case with the [redacted name] where it appears the Council did not understand or chose to ignore the Judge's decision. We believe these second costs amounted to about £16000."*
5. The council responded on 14 February 2013 by means of correspondence about the wider issue.
6. On 14 February 2013, the complainant wrote to the council asking for a valid response to his request.
7. The complainant contacted the Commissioner on 1 March 2013 to complain that he had not received a valid response to his request.
8. The Commissioner wrote to the council on 4 July 2013 and requested that a valid response to the request be provided within 20 working days.
9. The council subsequently responded to the complainant on 9 August 2013, and disclosed information in response to the request. Included in this information was a minute in relation to part 1 of the request.
10. The complainant asked for an internal review on 2 September 2013, as he disputed the amount of information that had been provided in response to part 1 of his request.
11. The council provided the outcome of its internal review on 16 September 2013, and maintained that all held information had been provided in response to the request.

## **Scope of the case**

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12. The council provided the complainant with a minute in response to part 1 of his request. The complainant subsequently asked the Commissioner to consider whether he had received all held minutes in relation to this part of his request.
13. The Commissioner has noted that there is a wider dispute between the council and the complainant, and that the complainant contests the council's authority to make decisions related to legal proceedings. The complainant's request for information relates to this dispute. The Commissioner would stress to both parties that the grounds for that dispute does not fall within his jurisdiction, and that this decision notice only records the outcome of the Commissioner's investigation into whether further minutes are likely, or unlikely, to be held by the council.

## Reasons for decision

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### Is the information environmental?

14. The first question for the Commissioner to address here is whether the information is environmental in accordance with the definition given in regulation 2(1) of the EIR. Environmental information is defined within regulation 2(1) as:

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

*(c) measures (including administrative measures), such as policies, legislation, plans, programmes...and activities affecting or likely to affect the elements and factors referred to in (a) and (b)...".*

15. The information requested by the complainant in this case relates to the decision to commence legal proceedings on the matter of contested land ownership. The view of the Commissioner is that this information would relate to activities likely to affect the use of the land, and so falls within regulation 2(1)(c), as it would affect the elements and factors referred to in regulations 2(1)(a) and (b). The information requested by the complainant is therefore environmental information. Consequently, the Commissioner will consider whether the request was dealt with in accordance with the EIR.

### **Regulation 5(1) – Duty to make available environmental information on request**

16. Regulation 5(1) of the EIR states that a public authority that holds environmental information shall make it available on request, subject to any exceptions that may apply.
17. On 19 September 2013, the Commissioner wrote to the council to request details about the way that it manages records that relate to part 1 of the complainant's request. The Commissioner also asked the council to confirm the searches it had undertaken within these records.
18. Having received the council's reply, the Commissioner understands that all council minutes are kept in hardcopy format and are available for public inspection in accordance with the Local Government Act 1972. Accordingly, the council has stated that no minutes have ever been destroyed, as there is a legal requirement upon the council to retain these. Consequently, all minutes since the council's inception in 1979 are still held.

19. Additionally, it is understood that copies of all minutes from 2004 onwards are held electronically and are currently available on the council's website at:  
<http://www.newmiltontowncouncil.gov.uk/council/minutes/>.  
The exception to this are the Executive Committee minutes, which the Commissioner understands refer to budget and personnel issues and are therefore not displayed through the website. However, these may still be publically inspected if so requested.
20. The council has advised the Commissioner that manual searches were carried out on all minutes for the Finance and General Purpose Committee, Amenities Committee, and Full Town Council Committee from 2003 to 2008 for references to the two cases that the complainant is seeking information about. Additionally, all Executive Committee minutes from 2003 to present were also searched. The council clarified to the Commissioner that its Planning Committee minutes were not searched, as it would not reasonably expect any relevant information to be held within these.
21. The council has stated that, having considered the way in which it holds minutes and undertakes searches, it does not consider there to be any further minutes held beyond that which has already been provided to the complainant. The council also confirmed to the Commissioner that no relevant minutes were held that were exempt from public disclosure under the exceptions within the EIR.
22. In the circumstances of this complaint, the Commissioner must decide on the balance of probabilities whether any further information is likely to be held by the council in relation to part 1 of the complainant's request. The factors that have been considered in coming to a conclusion have included the apparent thoroughness of the council's search, the centralised manner in which minutes are held, and the strong awareness by the council of its responsibilities under the Local Government Act 1972. Additional to this, the Commissioner has considered the fact that a substantial part of the council's minutes have been proactively published via its webpages, which itself provides evidence to suggest that the council has taken considerable steps to ensure public transparency of its records. Balanced against these points, there have been no compelling arguments presented to suggest that further relevant minutes may be held.
23. Having considered these factors, the Commissioner has come to the conclusion, based on the balance of probabilities, that it is unlikely the council holds further relevant minutes in relation to part 1 of the complainant's request.

### **Regulation 5(2) – Time for compliance**

24. Regulation 5(2) of the EIR requires that environmental information, unless exempt from public disclosure under the exceptions within the EIR, should be disclosed as soon as possible following receipt of a request and, in any event, within 20 working days.
25. In this case the Commissioner has identified that the council failed to provide a valid response to the complainant's request within 20 working days of receipt, and therefore breached the requirement of regulation 5(2). The council should ensure that there is no repetition of this breach in relation to future requests.

### **Other matters**

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26. The Commissioner would like to draw the council's attention to its responsibilities under the Environment Information Regulations 2004 and the Freedom of Information Act 2000. Both pieces of legislation require a public authority to provide a prompt, applicant-blind, and valid response to a request for information. In the event of future requests, the Commissioner's guidance for public authorities may be accessed at: [http://www.ico.org.uk/for\\_organisations](http://www.ico.org.uk/for_organisations)

## Right of appeal

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27. If 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)

28. 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.
29. 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**  
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**SK9 5AF**