

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 11 September 2014

Public Authority: Rochford District Council
Address: Council Offices
South Street
Rochford
Essex
SS4 1BW

Decision (including any steps ordered)

1. The complainant requested information from Rochford District Council (the Council) relating to a specific version of a town map. The Council stated that no relevant information was held.
2. The Commissioner's decision is that, on the balance of probabilities, the requested information is not held and that regulation 12(4)(a) of the EIR (information not held) therefore applies. However, he has determined that the Council breached regulation 14(3) of EIR by failing to issue a refusal notice in accordance with regulation 14 (refusal to disclose information). He requires no further action to be taken as a result of this decision.

Request and response

3. Following earlier correspondence, the complainant wrote to the Council on 20 February 2014 confirming the nature of the information he was requesting:

"The map I am after is the Rochford Town map scaled at 6 inches to 1 mile referred to on Page 141 of the ECC [Essex County Council] Planning Minutes dated 13 June 1961 this map will describe "the extension of the Metropolitan Green Belt for the following Town Map areas - Rochford".

4. The Council responded on the same day saying that the map *"is not in the possession of the Council"*.

5. On 19 May 2014 the complainant again requested information of the following description from Rochford Town Council:

"RDC's copy of the 1961 lawfully approved Rochford Town Map".

6. He sent further correspondence on 18 June 2014.
7. The Council responded on 23 June 2014 confirming that it considered that matters have been dealt with and advising the complainant that he was able to refer the matter on if he wished.

Scope of the case

8. The complainant provided the Commissioner with the relevant documentation on 24 June 2014 to complain about the way his request for information had been handled.
9. The Commissioner considers the scope of his investigation to be whether the Council holds information within the scope of the request.

Reasons for decision

Is the information environmental?

10. Environmental information is defined by regulation 2 of the EIR. Regulation 2(1)(c) provides that any information relating to measures, including activities and plans, affecting or likely to affect the elements and factors of the environment, will be covered by the EIR.

11. The Commissioner understands that, in the context of the request in this case, the requested information relates to plans for the development and use of the land.
12. The Commissioner is satisfied that the EIR applies in this case. He considers that the requested information is information on a measure, namely the plan for the development and use of land, likely to affect the state of the elements of the environment. As such, it would fall within the definition of environmental information set out at regulation 2(1)(c) of the EIR.
13. The Commissioner has therefore gone on to consider the Council's application of regulation 12(4)(a) of the EIR.

Regulation 12(4)(a) – Information not held

14. Regulation 5(1) of EIR provides that a public authority which holds environmental information should make it available on request.
15. Regulation 12(4)(a) of EIR provides that a public authority may refuse to disclose information where it does not hold that information when a request is received.
16. The Commissioner notes that, in his correspondence of 19 May 2014, the complainant told the Council:

"Page 141 [of the Essex County Council Planning Minutes dated 13 June 1961] clearly proves that this statutorily approved Town Map existed and was published on 12 June 1961. Its existence was a statutory requirement of the then sole planning authority ECC. It should today be in the possession/archive of Rochford District Council".

17. 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 Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority held any information falling within the scope of the request at the time that the request was made.
18. Accordingly, the Council was asked to provide the ICO with an explanation of the searches that were carried out in response to the

complainant's request, as well as any reasons it had for concluding that it did not hold the requested information.

19. In its substantive response, the Council advised the Commissioner that, if held, the information would have been in hard copy format rather than held electronically. It advised:

"archival storage and filing cabinets would have been searched".

20. It also explained:

"As far as we are aware, Rochford District Council has not held this information; the early development plans were the responsibility of the County Council".

21. In response to the Commissioner's question, the Council confirmed that there is no current business purpose to hold a copy of the requested information.

22. While appreciating the complainant's frustration in this case, the Commissioner is mindful of the comments made by the Information Tribunal in the case of *Johnson / MoJ* (EA2006/0085) that FOIA:

"does not extend to what information the public authority should be collecting nor how they should be using the technical tools at their disposal, but rather it is concerned with the disclosure of the information they do hold".

23. Having considered the Council's response, and on the basis of the evidence provided to him, the Commissioner is satisfied that on the balance of probabilities the Council does not hold the requested information.

Regulation 14 refusal to disclose information

24. This regulation sets out the duties of a public authority when refusing a request for environmental information.
25. Under the EIR, advising the applicant that the information is not held is achieved by issuing a refusal notice in accordance with regulation 14 and citing regulation 12(4)(a) which provides that a public authority is not required to disclose information it does not hold. The refusal notice should firstly make it clear that the request was considered under the Environmental Information Regulations 2004.

26. During the Commissioner's investigation, the Council acknowledged that although it advised the complainant that it did not hold the requested information, it failed to specify the exception it considered applied.
27. In failing to issue a refusal notice specifying the provision of the EIR under which the request was refused, the Commissioner finds the Council did not comply with the requirements of regulation 14(3).

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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

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

**Gerrard Tracey
Principal Adviser
Information Commissioner's Office
Wycliffe House
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Wilmslow
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SK9 5AF**