

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

Date: 5 February 2015

Public Authority: Wiltshire Council
Address: County Hall
Bythesea Road
Trowbridge
Wiltshire
BA14 8JN

Decision (including any steps ordered)

1. The complainant has requested all correspondence between the Council and the managers of a quarry known as 'Roundhouse Farm'. Although the Council provided some information the complainant believed that further information was held. During the course of the Commissioner's investigation additional information was discovered and released to the complainant.
2. Following that disclosure the Commissioner is satisfied that the Council does not hold any further information. The Commissioner therefore finds that the Council has complied with its duty under regulation 5(1) to communicate the requested information and that to the extent the Council has stated that it does not hold any additional information it is entitled to rely on the exception provided by regulation 12(4)(a) - information not held.
3. The Commissioner does not require the Council to take any further action in this matter.

Request and response

4. On 28 January 2013, the complainant wrote to the Council and requested information in the following terms:

"All correspondence and /or information concerning Roundhouse Farm, Marston Meysey exchanged between the Council and Moreton C

Cullimore (Gravels) Ltd, its agents and its employees or owners and (ii) between the Council and the various parts of Cotswold Water Park organisation. This would comprise all emails, phone conversations, letters and meeting minutes or references to them in third party correspondence which is not currently available on the Council's planning website."

5. Originally the Council refused the request under regulation 12(4)(b) on the basis that it was manifestly unreasonable. This led to a complaint being made to the Commissioner who issued a decision notice (FER0506611) on 10 February 2014 which found that regulation 12(4)(b) was not engaged and required the Council to issue a fresh response. The Council then disclosed a large volume of information on 17 March 2014.
6. Having studied the disclosed information, the complainant identified references to other information which he believed would be held by the Council. He therefore made a fresh complaint to the Commissioner. Given the history of the case the Commissioner did not require the complainant to seek an internal review before investigating his complaint.

Scope of the case

7. The complainant contacted the Commissioner on 22 July 2014 to complain about the fresh response provided by the Council. He produced a list of ten further documents which he believed the Council should hold. The list included other pieces of correspondence referred to in the documents that had already been released together with the agendas and minutes of meetings which were referred to. He asked the Commissioner to investigate whether the Council held this information. He also argued that the Council's failure to provide those documents raised valid questions over how thoroughly it had searched for information when responding to his request more generally.
8. During the Commissioner's investigation the Council reviewed the searches it had conducted and in particular carried out fresh searches for the documents identified by the complainant. As a result of those searches the Council located a number of emails, attachments, and photographs which had not previously been released. It provided the complainant with copies of these documents on 15 October 2014.
9. The Commissioner considers that the issue to be decided is whether the Council has now complied with its duty under regulation 5(1) of the EIR to make the requested information available.

10. To the extent that the Council is saying that it does not hold any additional information, including the specific documents referred to by the complainant, the Council is in effect refusing the request under regulation 12(4)(a). Regulation 12(4)(a) states that a public authority can refuse a request for information to the extent that it does not hold that information at the time of the request. Although the Council has not actually cited regulation 12(4)(a), the Commissioner is satisfied that it has in effect applied this exception. However, the scope of the investigation remains the same; it is to determine whether any additional information is held.

Reasons for decision

Regulation 5(1) – duty to communicate information and

Regulation 12(4)(a) – refusing a request on the basis that the information is not held

11. Regulation 5(1) of the EIR states that a public authority that holds environmental information shall make it available on request.
12. As set out above, regulation 12(4)(a) provides that a request can be refused on the basis that the public authority does not hold the requested information.
13. 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. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities the Council holds any further information which falls within the scope of the request.
14. In response to the Commissioner's enquiries the Council has carried out fresh searches of the information it holds. It is understood that these searches not only targeted the specific documents identified by the complainant, but would have been capable of identifying any other information captured by the request which had not yet been disclosed. The Commissioner will first consider the thoroughness of these fresh searches and determine whether, on the balance of probabilities, the searches would have found any additional information that was held. The Commissioner will then consider the specific documents identified by the complainant. Where the Council claims a document is not held the Commissioner will consider whether this is plausible.

The Searches

15. The Roundhouse Farm site has been the subject of four major planning applications and there is a file for each of those applications. In addition, the Council visits and carries out inspections of the site as part of a monitoring programme. A substantial amount of information relating to the site has been searched. Within the Council, it is the Minerals and Waste Development Team which has the main responsibility for the site. Therefore the searches have focussed on the information held by that team. Other teams which have had some involvement with the site have searched their own records but have stated that any relevant records they generated would be kept on the main files held by the Mineral and Waste Development Team.
16. All current officers from the Minerals and Waste Development Team who have had dealings with the Roundhouse Farm site have been involved in the search. Both electronic and manual records have been searched. The search included records held on personal computers and on networked resources and emails. The electronic files were searched using the terms, 'Roundhouse Farm', 'Roundhouse, Roundhouse Farm Quarry' and Cullimore'.
17. The Council has informed the Commissioner that many of the records for the Roundhouse Farm Site are still held as hard copies which are stored off site. These too have been physically searched.
18. According to its records management policy, information created during a planning application of this type should be kept for ten years after the planning permission has expired and the actual planning decision notices should be kept permanently. Therefore the Council does not believe that any records have been intentionally deleted or destroyed. However it is not possible to be one hundred percent certain. The Council has explained that over the period covered by the request numerous officers have been involved in the site, some of which have now left the Council. It is possible that information was destroyed when those officers left or that it was not properly copied on to the main file.
19. The Commissioner is satisfied that the Council has searched the relevant business areas and that the search has included hard copies, electronic shared drives and personal drives. Whilst it is always possible that mistakes can be made, especially when searching voluminous manual files, the Commissioner has no reason to find that the searches were not carried out diligently. He is therefore satisfied that, on the balance of probabilities, the searches would have unearthed the requested information. The Council has informed the Commissioner that, other than a limited amount information relating to the documents specifically

identified by the complainant, these searches have not discovered any further information.

The specific documents identified by the complainant

20. The complainant has studied the information which was disclosed to him on the 17 March 2014. He has identified references within those documents which lead him to believe further information was held.
21. In a letter from an agent for Cullimore's (the managers of the site) to the Council dated 6/02/09, there is a reference to a meeting which took place on the 3/02/09. The complainant has asked whether there was an agenda for, or minutes of that meeting. The Council has said categorically that there is no agenda or minutes. The Commissioner considers it entirely plausible that meetings between the Council and agents for quarry managers would not follow formal procedures requiring an agenda or minutes. The Commissioner considers this even more likely as the letter referred to was produced only three days after the meeting and could well set out much of what was discussed at the meeting.
22. The same letter refers to a draft scheme for 'Condition 40', one of the conditions placed on the planning permission. Again the Council has categorically said that no draft scheme could be located. Having read the letter it is clear that at the time it was written a draft scheme for Condition 40 had been presented to the Council. The letter goes on to say that the draft scheme had been presented for "... informal comment prior to detail design which would accompany the forthcoming application". This might mean the Council had no need to keep a record of the draft scheme once it had been superseded by the final version. This may however be speculative. The important point is that the Council has searched for this specific document and has been unable to locate it. This leads the Commissioner to conclude that it is no longer held.
23. There is a reference to five photographs attached to an email from the quarry managers to the Council dated 6//10/09. These photographs were located and have now been provided to the complainant.
24. An email dated 11/11/09 between the Council and an agent for the quarry managers refers to a forthcoming meeting between the two parties on 20/11/09. Again the complainant believes there is likely to be an agenda and minutes in respect of that meeting. The Council has said there is not and again the Commissioner finds it entirely plausible that the everyday working practices of the Council were such that agendas and minutes would not have been produced.

25. The complainant identified an email between the Council and agents for the quarry. He gave the date of that email as 29/11/09, but this was simply an error and the Commissioner finds that the correct date of the email was 29/11/10. This email of the 29/11/10 refers to a previous email from the Council to the quarry managers dated 22/10/10. The complainant asked the Commissioner to investigate whether the earlier email existed. The Council were able to locate that email and it has now been provided to the complainant.
26. The next document identified by the complainant concerns a submission he made to the Council regarding the quarry. The complainant identified an email from the quarry managers to the Council dated 11/01/09 which shows that the submission was forwarded to agents for the quarry. The complainant wants the covering email sent by the Council to the agents for the quarry when that submission was forwarded. The Council were unable to identify any email dated 11/01/09 but did identify one dated 11/11/09 which the Commissioner accepts as being the one the complainant intended to refer to. The Council were then able to locate the covering email requested by the complainant and this has now been provided to him.
27. An email from the agents for the quarry to the Council dated 2/12/10 discusses arrangements for a meeting to take place on the 15/12/10. The complainant has asked for any agenda or minutes of that meeting. The Council has said categorically that no agenda or minutes are held. This is consistent with the Council's response to other request for agendas and minutes. The Commissioner accepts this response is plausible.
28. The next document identified by the complainant is referred to in an email from the quarry managers dated 17/02/11, which was copied to the Council. The email concerns some matter which the quarry managers obviously believe had already been dealt with as there is a clear reference to the Council having emailed the quarry managers about the same issue "a few months ago". This seems to provide firm evidence that at one time an earlier email on that subject had existed. However the Council has carried out fresh searches for that email and has been unable to locate it. Therefore the Commissioner concludes that, although it probably did exist at one time, the email has been destroyed or deleted. On the balance of probabilities the Commissioner accepts that this information is not held.
29. An email from the Council to agents for the quarry dated 4/10/11 included two attachments which were not originally provided to the complainant. The Council has found these attachments and they have now been provided to the complainant.

30. Finally the complainant has identified a letter from agents for the quarry to the Council dated 22/01/13. This letter is in response to an earlier letter from the Council, dated 11/01/13, and a subsequent phone call. The complainant has queried whether the Council still holds that letter, or a note of the telephone conversation. The Council has found the letter referred to and this has now been provided to the Council, but has said categorically that it does not hold a record of the telephone conversation. The Commissioner has no grounds for challenging the Council's position that there is no note of the phone call. The writing of phone notes is often dependant on the personal working practices of the officer involved, the time available and the significance of the phone call itself. The Commissioner finds it quite plausible that no record of the telephone conversation was made.
31. In respect of the specific documents identified by the complainant the Commissioner is satisfied that where such documents are indeed held the Council has located them and provided them to the complainant. The Commissioner considers it entirely plausible that the nature of the meetings referred to in emails and letters did not warrant the production of agendas and minutes. There is one email which the Commissioner accepts probably did exist at one point, see paragraph 28, however the Council has searched for this document and said categorically that it is not held. In light of this the Commissioner is satisfied that the email is not held.
32. The Commissioner finds that the Council has conducted thorough searches in response to his enquiries which were capable of unearthing any additional documents that fell within the scope of the request over and above those specifically highlighted by the complainant. The Commissioner concludes that, on the balance of probabilities, the Council has now provided the complainant with all the information it holds falling within the scope of the request. It has therefore complied with its duties to communicate the requested information under regulation 5(1).
33. It follows that in so far as the Council has stated that it does not hold either any of the specific documents highlighted by the complainant, or any other additional information, the Commissioner is satisfied that the Council is entitled to rely on regulation 12(4)(a). Although technically regulation 12(4)(a) is subject to the public interest the Commissioner recognises that it is impossible to do a meaningful public interest test if the information is not held.
34. The Commissioner does not require the Council to take any further action in this matter.

Right of appeal

35. 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

36. 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.
37. 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

Pamela Clements
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