

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 3 September 2015

Public Authority: Horsham District Council
Address: Parkside
Chart Way
Horsham
West Sussex
RH12 1RL

Decision (including any steps ordered)

1. The complainant has requested information relating to specific planning applications. Horsham District Council disclosed some of the requested information and confirmed that other information was not held.
2. The Commissioner's decision is that Horsham District Council has disclosed all the relevant information it holds and complied with regulation 5(1) of the EIR but that in responding outside 20 working days it breached regulation 5(2) of the EIR.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 9 January 2015, the complainant wrote to Horsham District Council (the "council") and requested information in the following terms:

"a. Horsham District Council Planning Department Development Management Report for the May 2014 Planning Development Meeting Planning Applications Reference DC/13 0683 Development at Bartram House Station Road Pulborough

b. Horsham District Council Planning Department Development Management Report for the May 2014 Planning Development Meeting Planning Applications Reference DC/13 0764 Development at Bartram House Station Road Pulborough

c. Horsham District Council Planning Department Development Management Report for the May 2014 Planning Development Meeting Planning Applications Reference DC/13 0765 Development at Bartram House Station Road Pulborough"

5. The council responded on 17 February 2015. It disclosed the information identified in part 'a' of the request and confirmed that it did not hold the reports referred to in parts 'b' and 'c' of the request.
6. Following an internal review the council wrote to the complainant on 27 April 2015. It stated that it was upholding its original position.

Scope of the case

7. On 29 April 2015 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 had correctly confirmed that the information identified in parts 'b' and 'c' of the request was not held.

Reasons for decision

Regulation 5 – duty to provide environmental information

9. Under regulation 5(1) of the EIR a public authority that holds environmental information shall make it available on request.
10. Under regulation 5(2) of the EIR public authorities should comply with regulation 5(1) within 20 working days.
11. The complainant believes that the council hold the reports identified in parts 'b' and 'c' of their request; the council has stated that this information is not held.
12. 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.
13. 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).

14. To assist with this determination the Commissioner approached the council with a number of questions which he routinely asks in such scenarios. The questions and the council's responses are summarised below.

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

15. The council confirmed that its Planning Department searched its "info@work" system and explained that the relevant reports, if held, would have been held here.

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

16. The council confirmed that searches were only conducted over the info@work system as this is where such information would be held on its network resources.

If searches included electronic data, which search terms were used?

17. The council confirmed that the relevant planning application reference numbers "DC/13 0683, DC/13 0764 and DC/13 0765" were used.

If the information were held would it be held as manual or electronic records?

18. The council explained that, if the information were held, it would be held as electronic records.

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

20. The council confirmed that a draft report was commenced but, as the highways advice was changed the report was not finished at the time of the May 2014 meeting identified in the request. It confirmed that no report (other than that disclosed to the complainant) was published or presented at the meeting. The council explained that subsequent discussions resulted in an apparent solution being found and the nascent document was over-written and saved as a different document. The resulting report was subsequently published.

21. The Commissioner considers that the request clearly asks for reports that were prepared for and presented at the relevant meeting in May 2014. The council's position is that reports relating to the planning

applications referred to in parts 'b' and 'c' of the request did not exist and were not presented at this meeting.

22. The complainant disputes the council's position and has directed the Commissioner to a letter they received from the council's Chief Executive (Tom Crowley) dated 24 May 2014. The complainant maintains that the letter suggests that further reports to that which has been disclosed were produced and should be held by the council.
23. Having read the letter in question the Commissioner does not consider that this provides explicit evidence of further information being held. However, for the avoidance of doubt he asked the council to provide clarity in this regard. The council explained that reports and items are often placed on meeting agendas even if the report in question has not been completed. In this case, it explained that the item was originally placed on the agenda as item '4' but it did not actually make it to committee and no report was compiled.
24. The Commissioner acknowledges that the complainant has concerns about the manner in which the council has dealt with the planning matters identified in the request. The Commissioner has explained to the complainant that he has no jurisdiction with regards to these substantive issues and that the remedy for such matters is provided by the planning process or (in relation to maladministration concerns) via the Local Government Ombudsman.
25. The Commissioner is mindful that there is a degree of confusion surrounding this matter and he understands why the complainant might believe that additional reports might be held. However, in such cases the Commissioner must focus on the available tangible evidence.
26. The Commissioner does not share the complainant's view that the letter from the Chief Executive contradicts the explanations provided by the council with regard to information held which satisfies the parameters defined by the request. In view of the explanations provided by the council and its explicit assurances that further relevant information is not held the Commissioner has concluded that, on the balance of probabilities, the council has disclosed all the relevant information it holds and complied with regulation 5(1) of the EIR.
27. The complainant submitted their request to the council on 9 January 2015 and the council responded on 17 February 2015. As the council failed to issue a response within 20 working days the Commissioner finds that it breached regulation 5(2) of the EIR.

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

Andrew White
Group Manager
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Water Lane
Wilmslow
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