

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

Decision notice

Date: 22 October 2015

Public Authority: St Edmundsbury Borough Council
Address: West Suffolk House
Western Way
Bury St Edmunds
Suffolk
IP33 3YU

Decision (including any steps ordered)

1. The complainant has requested information from St Edmundsbury Borough Council about planning matters in relation to two specific planning reference numbers, including all communication relating to pre-application meetings and discussions. The request also sought information about Development Control Meetings on specific dates.
2. St Edmundsbury Borough Council disclosed some information and stated that it did not hold the remaining information. The Commissioner is satisfied that St Edmundsbury Borough Council has disclosed all of the information it holds but in disclosing some information outside of the statutory time limit has breached regulation 5(2) of the EIR. He does not require the public authority to take any further steps.

Request and response

3. On 9 January 2015, the complainant wrote to St Edmundsbury Borough Council (the council) and requested information in the following terms:

"My solicitor has requested that I apply for information regarding Prior Approval Application [application number] an application made by [named councillor] and was put before St Edmundsbury Development Control Committee on Thursday 8th January 2015. I would also require the same information for Prior Approval Application [application

number]. Both of these applications were made by [named councillor] for [specific address]

I make this application under the Environment Information Regulation 2004 relating to ALL communications whether by e-mail, correspondence or telephone calls between officers of the council and named councillor] and his representatives. I also require minutes of the January 8th and the 4th December Development Control Committee meetings.

I also require for both of these applications ALL pre-application discussions, notes of meetings, telephone attendance notes and ALL other communications and details relating to the applications in question. If you fail to fully disclose then I will lodge an appeal with the Information Commissioners. I have noted that you reply to requests within a 20 day time limit. Please contact me by e-mail”.

4. On 12 January 2015 the council acknowledged the request. On 13 January 2015 the complainant submitted a request for additional information of the following description:

“Thank you for your reply to my request. I would also like some further information under the same act, I would like a list of all Prior Approval Applications under Part 3 of the Town and Country Act change of use for agricultural building into dwellinghouse.

I would also like a list of Prior Approval Applications under Part 3J change of use for an office into a dwellinghouse. The Application numbers would be fine, whether they had been refused or approved”.

5. On 2 February 2015 the council responded. It provided links to the two applications and advised that there were no pre application meetings in respect of either of the planning cases about which the complainant had requested information. It also attached lists relating to the part of the request dated 13 January 2015.
6. On 18 February 2015 the complainant wrote to the council stating that she had not received all of the requested information and highlighted the last two paragraphs of the request dated 9 January 2015.
7. On 19 February 2015 the council responded. It pointed out that its earlier response had stated that no pre application meetings took place for either application detailed in the request. Although it was not explicitly stated in the response, the Commissioner understands this to mean that the council does not hold the requested information.

8. The complainant made a complaint to the council on 6 March 2015 about its handling of her request for information.
9. A review of the council's handling of the request was undertaken and a response was issued on 1 April 2015.
10. As a result of the review, a copy of each of the Development Control Committee meetings was sent to the complainant and a link to the minutes of those meetings was also provided. Furthermore, a copy of an email and response was disclosed. The information disclosed in this response had not previously been disclosed.

Scope of the case

11. The complainant contacted the Commissioner on 6 May 2015 to complain about the way her request for information had been handled.
12. Specifically she stated that she had no further avenue of appeal to the council and that she did not accept the council's position that the information which has been disclosed is the only information held by the council in respect of her request.
13. The Commissioner considers the scope of his investigation is to determine whether the council has disclosed all of the information it holds within the scope of the request.

Appropriate legislation

14. The Commissioner must first determine whether the request should be considered under the Freedom of Information Act (FOIA) or the Environmental information Regulations (EIR).
15. Regulation 2 provides the definition of environmental information for the purposes of the Regulations. It defines environmental information as:

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

(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases

into the environment, affecting or likely to affect the elements of the environment referred to in (a);
(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;

16. The request relates to a planning application regarding the conversion of land/property from agricultural use to a dwelling house. The Commissioner therefore considers that it falls squarely within regulation 2(1)(c) in that it relates to information about measures which impact on the elements of the environment and the landscape. Accordingly the request falls to be dealt with under the EIR rather than the FOIA.

Reasons for decision

Regulation 5 – Duty to disclose environmental information

17. Regulation 5 of the EIR requires public authorities to provide environmental information within 20 working days of receipt of a request.
18. In this case the complainant asserts that not all of the information has been disclosed.
19. In scenarios where there is some dispute about 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.
20. In other words, in order to determine such complaints, the Commissioner 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).
21. To assist with this determination, the Commissioner approached the council with a number of standard questions.
22. The council has set out its position that it had conducted searches for archived emails in addition to current emails held on the network. This, the council asserts, should have disclosed any information within the scope of the request.

23. It confirmed that laptop computers are provided to officers to work from the network but that information is not stored locally to the individual laptops. Therefore any information held on the laptops would have been identified by the search of the council's network and email system.
24. The council has provided the Commissioner with details of the search terms used - which were the name of the relevant property and the name of the individual applicant - in order to identify any correspondence falling within the scope of the request.
25. In its submission to the Commissioner, the council has set out that no manual records were made and that the officer assigned to the case only had brief discussions with the agent via email; these have been disclosed.
26. The council confirmed that no information has been deleted or destroyed. It confirmed also that its current document retention policy states that pre-application discussions must be retained for ten years from the date of the discussion.
27. The council has set out that it does not keep a record of document destruction but that officers are confident that no information falling within scope has been deleted.
28. In addressing whether or not there is a business purpose for which the information should be held, the council has explained that it is for an applicant to determine whether or not they wish to enter into pre-application discussions and therefore no business reason exists for this information to be held in this case.
29. It remains the council's position that all information which it holds has been disclosed. It has confirmed that it is not aware of any statutory requirements to retain the requested information.
30. The council has asserted that the complainant's position is that in respect of these applications, further correspondence was entered into when this simply is not the case and all information held which falls within the scope of the request has been disclosed.
31. The Commissioner accepts that on the balance of probabilities, the council has disclosed all of the information it holds within the scope of the request.
32. However, in respect of the information provided to the complainant on 1 April 2015, it was disclosed outside of the statutory 20 day time limit and therefore constitutes a breach of EIR regulation 5(2).

Other matters

33. The Commissioner notes that some of the information was disclosed outside of the statutory time limit and it appears that this was because of an oversight on the part of the officer handling the request. He is pleased to note that the council has acknowledged the oversight and has arranged refresher training in order to mitigate against similar issues in the future.

Right of appeal

34. 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 123 4504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

35. 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.
36. 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

Alexander Ganotis
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