

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

Decision notice

Date: 12 May 2015

Public Authority: Kislingbury Parish Council
Address: The Paddocks
Baker Street
Gayton
Northampton
NN7 3EZ

Decision (including any steps ordered)

1. The complainant requested information from Kislingbury Parish Council ("the council") relating to an area known as "the Old Pond site". The council supplied some information. The complainant alleged that more was held. The Commissioner investigated and found that more information falling within the scope of the request was held. The Commissioner accepts that on the balance of probabilities no further information is now held. He finds that the council breached regulation 5(1) and 5(2) of the Environmental Information Regulations 2004 ("the EIR") for failing to disclose all the information it held. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - The council should make the additional information falling within the scope of this request available to the complainant in his preferred format or either electronic or paper hardcopies. This refers to the information obtained from the council's solicitor, the invoice for the sum of £1848, the invoice for the sum of £300 and the relevant parts of the spreadsheets recording the receipt of these amounts.
2. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

3. On 17 June 2014, the complainant requested information from the council in the following terms:

"Please send me:

Copies of all documents referred to in Parish Council Minutes which relate to 'The Old Pond Site' from 1st October 2012 to date.

Copies of any other correspondence, communications, reports, invoices, contracts and notes relating to 'The Old Pond Site' exchanged between Parish Council members and any third parties from 1st October 2012 to date

I would like the above information to be provided to me as electronic copies".

4. On 5 July 2014, the council supplied a bundle of documents.
5. On 13 July 2014, the complainant expressed dissatisfaction with the council's response. He said that he believed that the council had not provided all of the information. The complainant supplied a table headed "missing documents" in which he outlined more precisely the information that he would expect to be held.
6. The council responded on 8 August 2014. The council said that it had provided all the information held and made some comments about the information referred to.
7. On 8 August 2014, the complainant wrote to the council again and referred to two particular categories of information that he would expect the council to hold.
8. The council replied on 21 September 2014. It supplied some additional information which it said was outside the scope of the original request or not held at the time of the request. The council reiterated that there was no further information held.

Scope of the case

9. The complainant contacted the Commissioner on 2 September 2014 to complain about the way his request for information had been handled. He specifically asked the Commissioner to consider whether the council held any more information falling within the scope of his request and clarified the items he continued to believe were held.
10. Although the complainant accepted that the remaining information described in his table headed "missing documents" was not held by the council, he expressed concern to the Commissioner about the council's records management and he specifically asked the Commissioner to address this as his primary concern. The Commissioner has commented on this in the Other Matters section of this notice.

Reasons for decision

Regulation 2(1)(c)

11. The council did not respond to the request under the terms of the EIR. However, the Commissioner's view is that the information requested is environmental. Regulation 2(1)(c) of the EIR provides that any information on activities affecting or likely to affect the elements and factors of the environment listed is environmental information for the purposes of the EIR. This case relates to an area of land and maintenance and ownership issues. Land is one of the elements listed in regulation 2(1)(c).

Regulation 12(4)(a)

12. Regulation 5(1) of the EIR provides a general right of access to recorded environmental information held by public authorities. Public authorities should make environmental information available within 20 working days unless a valid exception applies.
13. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. He will also consider the actions taken by the authority to check that the information was not held and he will consider if the authority is able to explain why the information was not held. For clarity,

the Commissioner is not expected to prove categorically whether the information was held. He is only required to make a judgement on whether the information was held "on the balance of probabilities".¹

14. The Commissioner considers that some background about these events would help to put these requests into context. The council explained to the Commissioner that the council approached a solicitor to ask for his help in ascertaining who owned an area of land known as the Old Pond site as it was in a poor condition at the time. The solicitor identified the owners of the site and they were pleased to offer the site to the council subject to certain terms. There was also some contact between the solicitor and a housing company who had installed a footpath across the site. As part of the negotiations about the land, the council agreed to transfer part of it to the solicitor, who had a personal interest in a track way. The solicitor agreed to reimburse all the legal costs regarding the land transfer.
15. The complainant has specifically asked the Commissioner to consider whether the council held certain items of information. His belief that this information was held has arisen from his consideration of particular documents supplied to him by the council on 5 July 2014 and the council's retention schedule.
16. The complainant alleged that the council held copies of invoices and receipts relating to various financial transactions mentioned in the original bundle of documents supplied to him. He referred to references in the following documents:
 - Correspondence dated 19 January 2012 refers to costs
 - Correspondence dated 6 June 2013 refers to professional fees
 - Correspondence dated 10 June 2013 refers to a "potential payment"
 - Correspondence dated 16 July 2013 refers to a personal cheque for £300
 - Council minutes from April 2014 refer to a payment of fees amounting to £1,848 to a solicitors' firm
17. The complainant also alleged more information was held relating to the disposal of land to the solicitor and his wife. He said that this transaction had been referred to on multiple occasions in the documents that had been sent to him. He referred as an example to a reference in the following document:

¹ This approach is supported by the Information Tribunal's findings in *Linda Bromley and Others / Environment Agency* (31 August 2007) EA/2006/0072

- Correspondence dated 19 November 2013 refers to the land transfer
18. Finally, the complainant said that he had not been supplied with a copy of a resolution passed by the council on 14 February 2013. This refers to a reference in the following document:
- Land registry land transfer document dated 15 June 2013
19. The council initially told the Commissioner in a written response that it wished to maintain that no further information was held. It said that it had conducted searches to check that this was the case. It said that it had checked the council's financial records including invoices and all filed documents and paperwork had been checked by the council's Chairman. It said that no electronic records were kept as anything important would be retained as hardcopy. The council said that the matters relating to the Old Pond Site had been partly dealt with by a former council chairman who had since passed away. The council said that it has no knowledge of any records that may have been held in her private files. It said that no information had been deleted or destroyed since the information request and specifically said that legal documents, minutes and records of financial transactions would be retained.
20. The council also told the Commissioner during a subsequent telephone conversation that information not considered to be important by the council would have been deleted or destroyed. The council has no record of what information was deleted or destroyed. In relation to any information that may have been held by the council's former chairman, the council confirmed that it had no way of accessing that information and no records of what information had been lost in this way. The council confirmed that it was very likely that information falling within the scope of this request would have been held in the former chairman's "private files" since she had been involved in this matter.
21. Upon consideration of the information already supplied by the council to the complainant, the Commissioner highlighted to the council that the bundle of information supplied to the complainant included a letter from the solicitor acting for the council. That letter had referred to documents being stored at the solicitor's office. The Commissioner asked the council to consult the solicitor directly to check whether any information falling within the scope of this request was held by the solicitor on behalf of the council. The council consulted the solicitor and a further bundle of documents relating to the Old Pond site were identified. The council said that there was no reason why it would wish to withhold any of this information. The Commissioner understands that this information includes more legal documents regarding the area of land that was transferred to the solicitor by the council.

22. In relation to receipts and invoices in particular, the council clarified that it had not initially thought that this information fell within the scope of the request. The Commissioner highlighted that the request was phrased broadly enough to cover this information, and invoices were specifically mentioned in the request. The council said that only two invoices were held relating to payments made to the solicitor and these were reimbursed. The invoices relate to the two payments specifically mentioned by the complainant for the sums of £1848 and £300. The council also confirmed that it held spreadsheets showing the receipt of these amounts. It confirmed that it held no other invoices or receipts falling within the scope of the request and that it had checked more than once following direction from the Commissioner. The council confirmed that this information was not excepted under the EIR.
23. In relation to the resolution passed by the council on 14 February 2013, the council said that any information regarding this would be in its minutes, which are published on the website. The council checked and confirmed that there was a reference to this in the minutes on its website from 19 February 2013. This refers specifically to the agreement being approved and that it can now be signed.
24. In view of the above, the Commissioner has decided to accept that on the balance of probabilities no further information is held beyond the additional material identified above. The council has confirmed that it has carried out searches to check that no other information was held, which has involved a consultation with the solicitor who dealt with this matter. The council has confirmed that some information is likely to have been destroyed however it has no record of this.
25. As mentioned some information falling within the scope of this request may also have been held by the former chairman of the council. It is not possible to say whether or not this was definitely the case but the council believes that it was likely. As the former chairman has since passed away, the council has said that it is not able to access this information anymore.
26. In terms of the specific queries raised by the complainant, the council has identified two invoices and spreadsheets recording receipts falling within the scope of the request and relevant minutes relating to the council resolution. The Commissioner also understands that there is more information about the land transfer contained in the documents obtained from the solicitor. The Commissioner considered the other references relating to the complainant's query about receipts and invoices but those references did not clearly indicate the existence of further information. For example, reference to a potential payment does not show that a payment was actually made. No strong evidence was

brought to the Commissioner's attention that would demonstrate the existence of more recorded information beyond that identified.

Regulation 5(1) and 5(2)

27. As noted above, the Commissioner found that further information was held. The Commissioner therefore finds that the council breached its obligations under regulation 5(1) and 5(2) of the EIR for failing to make environmental information available within 20 working days and by the date of its internal review.

Regulation 6(1)

28. The council initially agreed to send the additional information identified to the complainant in the post however it subsequently said that it was going to make it available for inspection instead. Regulation 6(1) of the EIR provides the following:

"Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless –

- (a) It is reasonable for it to make the information available in another form or format; or*
- (b) The information is already publicly available and easily accessible to the applicant in another form or format"*

29. In this case, the complainant asked specifically in his original request for copies of the information to be sent to him, stating that he would prefer electronic copies. The council contacted the complainant to ask whether he would be willing to inspect the information at its offices but he refused that offer, saying that it was not convenient. The Commissioner therefore asked the council if it could explain why it considered that it would not be reasonable to provide the information in the form requested. The Clerk explained that she is a part time worker for only eight hours a week. She said that there are other demands on her time and that it would be too time consuming to expect her to comply with this request in this manner when she had already offered to make the information available for inspection. She said that she has a scanner and a photocopier but these are her personal equipment at her home and she is not willing to use these and in relation to the photocopier, it is too small for photocopying many documents as there are in this case. She said she would have to drive some distance to get to another larger photocopier.
30. The Commissioner also consulted the complainant further about the issues he has regarding inspection. He made the important point that he

wants to have the time to read and digest the documents. He said that as far as he was aware, none of the documents are so unusual as to preclude photocopying or scanning. The complainant also explained to the Commissioner he did not wish to visit the Clerk's home in the circumstances of this case, even if it was convenient in terms of time and distance, which he said it is not. However, he did add that he would be happy to pay for photocopying, as he had done previously.

31. The Commissioner considered both arguments above, and he has also taken into account the background circumstances. The inspection would have to take place at the Clerk's home and may take a while given the volume of documents described by the Clerk and the nature of the information. However, it is clear that there has been a degree of breakdown in the relationship between the parties. Furthermore, in cases where there is a lot of detailed information, it may prove more difficult for an individual requester to digest fairly during an inspection. The complainant also has a personal interest in this information and it is more likely that a requester would require copies of documents in such circumstances. Taking these factors into account, the Commissioner decided that visiting the Clerk's home to inspect the documents would not be a suitable arrangement.
32. The Commissioner cannot compel the Clerk to use her personal equipment to respond to this request if she is refusing to do so. The alternative would be that the Clerk travels to a location where she can use larger equipment. While the Commissioner accepts that the burden on the Clerk working such a limited number of hours would be greater than that shouldered by a larger authority with more resources, the Commissioner considers that there are some circumstances where an inspection is not an appropriate way to comply with the council's obligations under the legislation to make information available. In the Commissioner's judgement, this is one of those circumstances. The Commissioner has therefore decided to order the council to provide copies of the documents to the complainant.
33. For clarity, the Commissioner does not require the council to supply a copy of the minutes on its website relating to the resolution in February 2013 because this information is already publicly available and easily accessible to the requester and this therefore satisfies regulation 6(1)(b).

Other matters

34. The complainant expressed concerns to the Commissioner about the adequacy of the council's records management procedures. Having investigated the way in which the council dealt with this particular request, the Commissioner shares those concerns. The Commissioner has written separately to the council to outline his concerns and to highlight the recommendations for effective records management outlined in the Lord Chancellor's "Code of Practice on the management of records" issued under section 46 of the FOIA. A link to the Code of Practice is here:

<http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section-46-code-of-practice.pdf>

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

Andrew White
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