

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

**Decision notice**

**Date:** 1 March 2016

**Public Authority:** Streatley Parish Council  
**Address:** streatley.p.c@hotmail.com

**Decision (including any steps ordered)**

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1. The complainant requested information relating to an allotment site within the local area. Streatley Parish Council (the Council) provided one document and confirmed no further relevant information was held.
2. The Commissioner's decision is that on the balance of probabilities the Council has provided all of the information it holds relevant to the request. No steps are required.

**Request and response**

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3. On 2 July 2015, the complainant wrote to the Council and requested information in the following terms:

*"I wish to make a freedom of information ("FOI") request following advice I have received from the Information Commissioner's Office.*

*Can you please provide the following information? :*

*1) Re: Allotment field in Sharpenhoe that the 16 May 2011 Parish minutes states was purchased by the Parish Council in 1920.*

*1 A copy of the land registry document confirming location and ownership of the above land which the External Auditor instructed the Parish Council to obtain.*

*2 Any documents confirming current [sic] ownership of the above land that the Parish Council is relying on as proof of ownership if a land registry search was not conducted.*

*3 A copy of the document detailing the transfer of ownership, if the above land was transferred to what is now Central Bedfordshire Council.*

*2) A copy of the Parish Councils Subject Access Request procedure."*

4. The Council then responded on 2 July 2015 and provided a copy of the Land Registry entry for the land in question. It stated that this was all the information held.
5. The complainant contacted the Commissioner to ask him to proceed to an investigation. In his view, the Council had breached the EIR because it had not confirmed or denied whether information was held to each individual aspect of his request.
6. The Commissioner contacted the Council to ask it to confirm whether its reply covered all parts of the complainant's request. The Council confirmed this was the case. The Commissioner contacted the complainant to inform him of this and the complainant asked the Commissioner to find the Council in breach of the EIR because it did not specifically address each part of his request.
7. The Commissioner disagrees with the complainant. Whilst the Commissioner considers the Council could have made it clearer, the statement can be read as a denial that any further information is held for the request in its entirety.
8. The complainant confirmed on 2 October 2015 that he wished to appeal against the Council's position. Usually the Commissioner expects an internal review to be carried out before accepting an appeal; but given the resources of the Council – and the fact it had confirmed to the Commissioner that nothing further was held – the Commissioner considered it appropriate to proceed straight to an investigation.

### **Scope of the case**

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9. In the complainant's correspondence of 2 October 2015 he made it clear that he considered further information was held for items 1) and 2) of his request.
10. The Commissioner considers the scope of the case to be whether the Council has provided all of the relevant information for both items of the request.

## Reasons for decision

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### Is the information environmental?

11. The Commissioner considers that the information provided for item 1) – and any further information held – would be environmental. Regulation 2(1) of the EIR set out a number of different definitions of environmental information. The key definitions relevant to this case are those contained at regulations 2(1)(a) and (c):

*“environmental information” has the same meaning as in Article 2(1) of the Directive, namely 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;*

*(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;’*

12. Item 1) of the request relates to allotments and is essentially information relating to registration of land. This can be correctly seen as information on a measure – namely the process of registering of land – that is likely to affect the land itself. How a piece of land is registered, and to whom, is in the Commissioner’s opinion likely to affect the use of that land and thus have a direct effect on it. Therefore it is environmental information as per regulation 2 and the request shall be handled under the provisions of the EIR.
13. The Commissioner considers that item 2) of the complainant’s request is solely relating to Council procedure on subject access requests under the Data Protection Act 1998 (DPA). This does not meet any of the definitions for environmental information as per regulation 2 of the EIR. This request should be handled under the Freedom of Information Act 2000 (the Act).
14. Regardless of legislation the requirements for both requests are the same – i.e. whether more information is held than stated by the Council – so the decision for the Commissioner will follow the same process.

## Information held

15. The relevant passages within the two pieces of legislation are section 1(1) of the Act and regulation 12(4)(a) of the EIR:

*1(1) Any person making a request for information to a public authority is entitled –*

*(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*

*(b) if that is the case, to have that information communicated to him.*

*12(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that*

*(a) it does not hold that information when an applicant's request is received;*

16. In instances where there is a dispute between two parties over the amount of information held in a public authority's records, the Commissioner – in accordance with decisions from the First-Tier Tribunal – applies the civil standard balance of probabilities test. In effect, he seeks to determine whether it is likely or not that the Council holds further relevant information to the complainant's request.

### *Item 1) – information relating to the allotment site*

17. In response to the three parts of this request, the Council provided a copy of the Land Registry entry. The complainant has referred the Commissioner to this document, which shows that the land in question is now the property of Central Bedfordshire Council (CBC). The complainant stated that the Council's own minutes from 2011 show that it had purchased this land in the 1920's, so it follows that at some point the land was either sold or transferred to CBC. The Commissioner considers that this explanation of events is reasonable.
18. The Council disputes some of these facts. It stated that the allotments referred to in the 2011 minutes are not the ones that were described in the complainant's request, but another set which it also does not own. Having read the minutes the Commissioner notes these refer to land on Church Lane, whereas the title that was provided in response to the request refer to an area on Sharpenhoe Road.
19. The Commissioner does not consider that this it would be appropriate to make any decision on this, as it is not his place to do so. He has

considered whether it would be appropriate for the Council to provide assistance to the complainant as required under regulation 9 of the EIR. However, in this instance he does not expect that it would be reasonable, as the matter has been brought up with the complainant previously.

20. What the Commissioner considers to be relevant in this case is that the allotment site referred to in this request was at one point owned by the Council regardless of whether this was the site mentioned in the 2011 minutes. This was confirmed by the Council, who stated that it learnt of its ownership of this site from a third party when an archivist looked into the details for the Sharpenhoe allotment. The Council provided a copy of this letter and this states that the owner of the land was Bedfordshire County Council (which was merged into CBC in 2009). In the Commissioner's view, this strongly suggests that the land in question was at one point owned by the Council but is no longer.
21. The Council has confirmed that it holds no records of the transfer or sale of the land to another party or council. It stated that its records only go back to 2004 and are held in the house of the Parish Clerk. Anything beyond this is no longer retained by the Council, so anything about the transfer is not in the Council's immediate records – i.e. those within the Clerk's house as opposed to anything which may be archived elsewhere. The Commissioner considers this to be a reasonable argument given the nature of the Council's records.
22. The Commissioner notes that the only held information the Council provided was a document it was obstructed to obtain by an external auditor. This would further support the Council's argument that no further information is held, as the only document it states it holds is one which it was relatively recently ordered to acquire.
23. Based on the arguments stated above – and in the absence of any evidence indicating that the Council owned the land within the last 12 years – the Commissioner considers it likely that no further relevant information is held within the records in the property of the Parish Clerk.
24. The letter from the archivist which suggested the allotment had been purchased stated that this information was obtained from "the Parish Council Archive held [at Bedford District Council]". The Council itself had put in its submissions to the Commissioner that "any deeds/documentation relating to the site in question is likely to be held by Central Bedfordshire Council, if by anyone". This led the Commissioner to consider whether information is held on the Council's behalf by another public authority.

25. When determining whether another person holds information on behalf of a public authority the Commissioner looks at the relationship the public authority has with the other person. Specifically, he looks at what levels of control and access the public authority has to the information which used to be in its records.
26. The Council response to the Commissioner's enquiries stated that that there was no formal agreement for the transfer of any of the relevant information relating to the allotment. It also confirmed that it did not have special rights of access or control over the information, and that its rights would be the same as that of a normal citizen. Whilst the records might be referred to as the 'Parish Council Archives', the information does not belong to the Council under the provisions of the EIR.
27. Where a public authority believes information is held by another public authority then under regulation 10(1) of the EIR it has a duty to transfer the request to the other authority, or supply the name and address of the authority it believes holds the information. In this instance, the Council has not confirmed that it believes that CBC holds any relevant information, only that anything that might have been held could have been transferred to CBC. Without this knowledge the Commissioner does not consider it essential for the Council to inform the complainant that there is a chance that information of relevance might be held elsewhere.
28. The Commissioner is satisfied that any information which might be held within the records of another person is unlikely to be held on behalf of the Council as per the provisions of the EIR. Therefore, the Commissioner is satisfied that on the balance of probabilities the Council has provided all of the relevant information it holds to the complainant in relation to item 1) of his request.

*Item 2) subject access request procedure*

29. The complainant argued to the Commissioner that the Council must retain a subject access request procedure in order to comply with the DPA. He stated further that an individual can only make a subject access request once the applicable fee has been paid, and that if a data controller refuses to provide this information then they are denying individuals their right to access personal data.
30. The Commissioner is the regulator of the DPA so is well versed in the matters of subject access requests and the obligations of public authorities in this regard. He has informed the complainant – and maintains the view – that a data controller is not legally obliged under the DPA to have its subject access request procedure recorded as held information. The law is clear on what is required and the Commissioner's website covers what steps data controllers should take, so it is not

strictly an obligation for a data controller to have a procedure in writing. (Nor must a data controller require payment to be made if it is willing to process the subject access request for free.)

31. The Commissioner is also mindful that the Council is a very small data controller, so would not be in receipt of a great deal of subject access requests. The Council confirmed to the Commissioner that it had only ever received one subject access request. It stated that its procedure had been to comply with the law, but that it had not created a procedural document to support this. Given the resources and workload of the Council, the Commissioner considers that this is reasonable.
32. The Commissioner also notes that the Council's publication scheme clearly states that it does not hold the document the complainant has requested.<sup>1</sup> This is concurrent with the Council's statement that it does not hold the requested document.
33. The Commissioner's decision is that on the balance of probabilities the relevant information is unlikely to be held. No steps are required.

## **Other matters**

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34. In order to reach a decision the Commissioner relies on the cooperation of public authorities to determine how a request has been handled and how the legislation has been interpreted. In cases involving parish councils he is mindful of their limited resources and makes efforts to keep in mind the limitations that this can bring about.
35. However, in this case, the Council has reacted strongly to the Commissioner's enquiries about information that might be held on its behalf. It made a series of accusations about the Commissioner's decision making abilities and his impartiality, both of which are completely misplaced and totally unwarranted.
36. The Commissioner wishes to remind the Council that he has a legal obligation to ensure that the legislation has been applied correctly. The question of Council resources is an important one, but it does not mean that the Commissioner should be satisfied with an incomplete investigation. The Commissioner hopes that in the future the Council can

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<sup>1</sup> <http://streatley.bedsparishes.gov.uk/assets/documents/streatley-parish-council-inf>

refrain from repeating the accusations it made in this case and instead focus on assisting the Commissioner in ensuring the legislation has been complied with.



## Right of appeal

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37. 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](mailto:GRC@hmcts.gsi.gov.uk)

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

38. 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.
39. 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**  
**Group Manager**  
**Information Commissioner's Office**  
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