

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

Date: 9 August 2016

Public Authority: Durham County Council
Address: County Hall
Durham
County Durham
DH1 5UF

Decision (including any steps ordered)

1. The complainant has requested information relating to a specific planning application. The Commissioner's decision is that, on the balance of probabilities, Durham County Council does not hold further information relevant to this request. She does not require any steps to be taken to ensure compliance with the legislation.

Request and response

2. On 23 June 2015, the complainants wrote to Durham County Council ('the council') and requested information in the following terms:

"Please forward to us all non-exempt information relating to planning application DM14/00468/VOC, including any pre-application advice given and all communication with councillors, planning officers and the EHO, [name redacted]."
3. The council responded on 22 July 2015 and provided information within the scope of the request but made redactions citing the exception for personal data at regulation 13 of the EIR as its basis for doing so.
4. The complainants requested an internal review on 26 November 2015.
5. The council provided an internal review on 18 December 2015 in which it maintained its original position regarding regulation 13 and stated that

it has provided all email communications and correspondence on the application file which is not on the website.

Scope of the case

6. The complainants contacted the Commissioner on 15 February 2016 to complain about the way the request for information had been handled. They said that the response does not sufficiently demonstrate how the council came to its decision, that there are still emails that they know exist but are being withheld, and that the amount of redacted material is concerning and they would like to know whether this information would have affected the decision and/or does it concern them or their property.
7. During the course of the investigation, the council reviewed its position and released information previously withheld under regulation 13 of the EIR. It maintained a small amount of redactions for personal email addresses, signatures and a telephone number. It also confirmed that there is no personal information about the complainants or their property within the redacted information. Given that there has not been a complaint made in relation to the redaction of personal email addresses, signatures and a telephone number, the Commissioner has not deemed it necessary to consider the application of regulation 13 of the EIR.
8. The Commissioner has considered whether the council holds any further information within the scope of the request.

Reasons for decision

Regulation 5 – Duty to make environmental information available on request

9. Regulation 5(1) states that a public authority that holds environmental information shall make it available on request.
10. 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. She will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to

prove categorically whether the information was held, she is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.

11. The complainants have stated that the decision was made on the 28 January 2015 but because the last email provided in response to the request was from 2 May 2014 there is over 6 months unexplained of missing emails. They also said that the response did not provide correspondence between [name redacted – 'Officer A'] and [name redacted – 'Officer B'] and yet they know that emails were sent and that there should be an email with the decision sent to Officer B.
12. The Commissioner enquired as to whether further information has ever been held, the scope, quality, thoroughness and results of the searches carried out by the council, whether information had ever been held but deleted and whether copies of information may have been made and held in other locations. She asked the council to bear in mind the complainants position as described in the above paragraph.
13. The council said that relevant information would be held as electronic records and that a search on the council's networked email system was carried out. It said that Officer B searched his email inbox, sent items and deleted items as these are the only places where the emails would be stored. The search terms "[redacted], laurels, [redacted], liddle, gainford, birch" were used. It explained that Officer B did not keep any emails relating to the application beyond the application because he did not anticipate any need to. It said that Officer B accepts that there may have been emails that he was copied into or updates to/from Officer A during the application, but as with any such internal emails between officers they would have been deleted once read or soon after. It explained that Officer B regularly clears out his emails (inbox and sent items) to make space and has always been advised to delete any email that it is not necessary to keep and there is no requirement to keep a record of email deletions. It also said that nothing relevant was deleted after the EIR request was received.
14. The council also explained that Officer A left the authority in December 2014 and that an ex-employee's email account is deleted one year after the leaving date.
15. In relation to the complainant's assertion that there are over 6 months unexplained of missing emails, the council said that because the application was not going to be successful, Officer A was trying to find out if the applicants would withdraw the request and there is evidence of correspondence or activity in June, which is available at the online file, but essentially as the summer dragged on and Officer A neared retirement there was less incentive to chase the response. The

applicants did not provide a response and so in January, when the case was picked up by a new officer, a decision was issued. It also said that any emails would have come from Officer A, but none were found, and reiterated that anything else was placed on the website. In relation to the complainant's assertion that there should be an email with the decision sent to Officer B, the council said that it would not be normal practice to receive an email of the decision. It explained that the decision notice gets issued and a copy is placed on the website but the planning officer and decision maker don't get notified or copied into the decision.

16. In reaching a decision as to whether the requested information is held, the Commissioner also enquired whether there was any legal requirement or business need for the council to hold the information. The council confirm that there is neither a business need nor statutory requirement to retain further information.
17. The Commissioner also considered whether the council had any reason or motive to conceal the requested information but she has not seen any evidence of wrongdoing surrounding its records management obligations and has not identified any reason or motive to conceal the requested information.
18. In the circumstances, the Commissioner does not consider that there is any evidence that would justify refusing to accept the council's position that it does not hold further information relevant to this request. The council has carried out relevant searches, provided explanations as to why emails would not have been retained, and confirmed that emails will have been permanently deleted. The Commissioner acknowledges that at the time of the request, although Officer A had left the authority, his email account would have still existed and therefore been searchable, however it does not necessary follow that relevant information would have been held there, particularly given that the council's policy is to delete any email that it is not necessary to keep' She is therefore satisfied that on the balance of probabilities, further information is not held by the council. Accordingly, she does not consider that there was any evidence of a breach of regulation 5 in relation to such information.

Right of appeal

19. 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

20. 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.
21. 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

Deborah Clark
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF