

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

**Date:** 11 October 2016

**Public Authority:** Liss Parish Council  
**Address:** The Council Room  
Village Hall  
Hill Brow Road  
Liss  
Hampshire  
GU33 7LA

**Decision (including any steps ordered)**

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1. The complainant has requested information relating to the evaluation of sites considered for the Liss Village Neighbourhood Plan. The Commissioner's decision is that, on the balance of probabilities, Liss Parish Council does not hold further information relevant to this request. As the request was not responded to with the statutory timeframe, she has also decided that Liss Parish Council did not meet the requirements of regulation 5(2) of the EIR. She does not require any steps to be taken to ensure compliance with the legislation.

**Request and response**

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2. On 21 December 2015, the complainant wrote to Liss Parish Council ('the council') and requested information in the following terms:

"Please send me an electronic copy of your evaluation criteria as applied to all the sites you have considered for the Neighbourhood Plan so that we can ensure we have addressed all of them adequately from our side.

Also we request you provide a full electronic copy of your team's report, analysis, and recommendations relating to our site.

Please provide the name of the Landscape Officer from South Downs National Park and a copy of her advice provided to your quorum relating to our site for our records and evaluation.

Please provide the traffic analysis for Hatch Lane from which you derived your opinion that additional traffic is "unsuitable".

3. The council responded on 29 December 2015 and said that the criteria used for site selection is on its website. It said that a full report on the site selection process will be made available to everyone at the same time when it publishes the pre-consultation draft of the plan, scheduled for the end of February. It also said that the public forum on the 16 January will be in the form of an exhibition and will include information on site selection and alternative sites. It informed the complainant to contact [named individual] if he wishes to take up any issues with the South Downs National Park Authority.
4. The complainant expressed dissatisfaction with the response on 28 January 2016 and reiterated his request.
5. The council replied on 6 February 2016. It said that it is happy to provide everything it has put into public view and provided the second appraisal of potential housing sites, including the site at Hatch Lane and the earlier appraisal previously published which it described as 'the two core documents'. It reiterated that the issues with the South Downs National Park Authority should be taken up with them and said that the advice it has received from the highway authority has been relatively general rather than on specific sites and suggested that the complainant should take up the matter with the highway authority if he disagrees with its view. It also referred to section 22 of the FOIA and said that its intention is to make information available alongside the publication of the draft plan, and in particular to produce a document to be called 'Making the Plan' which will accompany the plan when it is submitted to the South Downs National Park Authority.
6. On 11 February 2016, the complainant informed the council that the information provided does not wholly satisfy the repeated requests for information he has made since December 2015. The correspondence refers to confusion as to the operation of the scoring system and requests that the council provide more detail as to how this has been applied due to the lack of explanation against each criterion.
7. The council responded on 19 February 2016 and said that it will publish as much information as it can when it publishes the pre-submission draft of the neighbourhood plan which will be launched at an exhibition on 19 March. It also said that the statutory planning process provides ample opportunity for the complainant to raise his concerns over the plan by

commenting on the pre-submission draft of the plan and that later in the process he will have an opportunity to make objections to the plan which will be considered by an independent examiner. It again reiterated that if the complainant wishes to question the advice given to the council by the South Downs National Park Authority he should do so directly with them.

8. The complainant contacted the Commissioner on 24 February 2016 to complain about the way his request for information had been handled. The Commissioner's investigation resulted in a decision notice<sup>1</sup> dated 28 April 2016 requiring the council to issue a fresh response as follows (paragraph 28 of the decision notice for case reference FER0618238):

"Given the circumstances, including the lack of clarity over what the council holds in response to each element of the request and lack of relevant provisions of the EIR being cited, the Commissioner requires the council to issue a fresh response to the request under the EIR bearing in mind its duty to provide advice and assistance as per regulation 9. The response should specifically state what information is held in relation to each element of the request. If information within the scope of the request is already publically available, the council should cite regulation 6(1)(b) and direct the complainant to such information. If information is not held the council should cite the exception at regulation 12(4)(a). If information is held that the council believes is subject to an exception, the council should state which exception applies and the matters it has considered in reaching its decision with respect to the public interest in accordance with regulation 14. The council should consult the Commissioner's guidance on the EIR. The following in particular appear relevant in this case:

<https://ico.org.uk/for-organisations/guide-to-the-environmentalinformation-regulations/>

[https://ico.org.uk/media/fororganisations/documents/1169/determining\\_whether\\_information\\_is\\_held\\_foi\\_eir.pdf](https://ico.org.uk/media/fororganisations/documents/1169/determining_whether_information_is_held_foi_eir.pdf)

[https://ico.org.uk/media/fororganisations/documents/1628/refusing\\_a\\_request\\_under\\_the\\_eir.pdf](https://ico.org.uk/media/fororganisations/documents/1628/refusing_a_request_under_the_eir.pdf)

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<sup>1</sup> [https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1624347/fer\\_0618238.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1624347/fer_0618238.pdf)

<https://ico.org.uk/media/for-organisations/documents/1639/form-and-format-of-information-eir-guidance.pdf>

[https://ico.org.uk/media/fororganisations/documents/1637/eir\\_material\\_in\\_the\\_course\\_of\\_completion.pdf](https://ico.org.uk/media/fororganisations/documents/1637/eir_material_in_the_course_of_completion.pdf)

[https://ico.org.uk/media/fororganisations/documents/1629/eir\\_effect\\_of\\_exceptions\\_and\\_the\\_public\\_interest\\_test.pdf](https://ico.org.uk/media/fororganisations/documents/1629/eir_effect_of_exceptions_and_the_public_interest_test.pdf)

[https://ico.org.uk/media/fororganisations/documents/1143/good\\_practice\\_advice\\_assistance.pdf](https://ico.org.uk/media/fororganisations/documents/1143/good_practice_advice_assistance.pdf)

<https://ico.org.uk/media/fororganisations/documents/1631/eiradviceandassistance.pdf>

9. The council issued a fresh response to the complainant on 2 June 2016. It cited regulation 6(1)(b) for documents placed on the website 'Lissnp.org.uk' on 21 March 2016 and regulation 12(4)(a) for information not held.

## **Scope of the case**

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10. On 7 August 2016, the complainant contacted the Commissioner to express dissatisfaction with the fresh response. He identified that further information within the scope of his requests was likely to exist, in particular notes of a meeting on 7 October 2015 to discuss the criteria for each proposed development site referred to in minutes of the Steering Group of 8 October 2015. The complainant also said that he considered the council's fresh response to fall outside of the 35 day limit stipulated in the decision notice for case reference FER0618238 and asked the Commissioner to make written certification to the High Court of the failure of the council to comply with the decision notice. He said that he cannot understand why there was such a delay to receiving the information requested in time to challenge the draft Liss Neighbourhood Plan whose consultation period lasted from 21 March 2016 until 16 May 2016 and that the council had ample opportunity to provide the information before the deadline of 16 May 2016 which would have been in time for him to utilise it to submit his views to the public consultation. He said the following:

"By delaying the provision of the information we requested, and upheld by the Decision, the LNP denied us the opportunity to factually challenge, with the benefit of supporting evidence, the draft

neighbourhood plan and thereby damaged our company's chances of being able to have its site development proposals fairly assessed and potentially included in the draft LNP. We strongly believe that our site was not afforded due consideration by the neighbourhood plan team and we needed the information to prove that. We now have discovered that it appears there is more documentation concerning our site's passage through the neighbourhood plan's committee process that has been withheld from us."

11. The Commissioner responded to the complainant on 9 August 2016 stating that the decision notice for case reference FER0618238 was dated 28 April 2016 and that the council provided a fresh response to the request on the 2 June 2016 which was 35 calendar days from the date the decision notice was issued. Therefore the response did not fall outside of the 35 day limit. In relation to the request for assistance to obtain a copy of documentation that the complainant considered has been withheld, the Commissioner said that she would consider whether the council has complied with its duty under regulation 5 of the EIR to make information it holds available.
12. In subsequent correspondence on 9 August 2016, the complainant emphasised that by the council choosing to wait until the last possible day to issue the response he missed the opportunity to challenge the draft neighbourhood plan as he did not receive the response until weeks after the closing date for public comment. He also said that it is difficult to be sure exactly what is held by the council and the Neighbourhood Plan Committee as it has been less than transparent throughout the engagement with him.
13. The Commissioner then telephoned the council on 18 August 2016 regarding the information the complainant considered should exist and should have been provided, namely the notes of a meeting on 7 October 2015. The council said that the notes of the meeting on 7 October 2015 should have been annexed to the minutes of 8 October 15 and said that it would send them direct to the complainant within the next couple of days.
14. On 31 August 2016, the council provided the complainant with an email constituting the notes of a meeting on 7 October 2015 and an email dated 1 October 2015.
15. After having received the further information, the complainant contacted the Commissioner on 7 September 2016 to express further dissatisfaction. He said that the main document supplied is not dated or clearly titled so he has no idea whether it is the notes of a meeting on 7 October 2015 and that the email dated 1 October 2015 refers to Inspectors Reports which haven't been disclosed. He also reiterated the

problems that the delay in providing the information has caused to his business' progress.

16. On 8 September 2016 the Commissioner spoke to the complainant and agreed to carry out an investigation into whether further information is held and record a breach of time limits for compliance.
17. During a telephone conversation on 5 October 2016, the Parish Clerk said that the notes of a meeting on 7 October 2015 were printed from the website and agreed to search for an electronic and dated copy of the email containing the notes and provide it to the complainant if held. Therefore the Commissioner has not considered it necessary to include the provision of an electronic and dated copy of the notes of a meeting on 7 October 2015 within the scope of the request.
18. Therefore, the Commissioner has considered whether the council holds any further information within the scope of the request.
19. She has also considered whether there has been a breach of the time limits for compliance at regulation 5(2) of the EIR.

## **Reasons for decision**

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### **Regulation 5 – Duty to make environmental information available on request**

20. Regulation 5(1) states that a public authority that holds environmental information shall make it available on request.
21. 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.
22. The Commissioner informed the council that due to the delays and the piecemeal disclosure of information in this case, the complainant believes that further information may exist. She 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 that the complainant considers that the emails dated 1 October 2015 provided to him on 31 August 2016 indicate that Inspectors Report(s) exist as the emails refer to 'the 1st Review Inspector's Report' and the '2nd Review Inspector'. She also informed the council that the complainant considers that it cannot be established whether the email entitled 'WG2 – minutes / actions', also provided on 31 August 2016, is the 'circulated notes' of 7 October 2015, referred to in the minutes of the Steering Group of 8 October 2015, because it is not dated or clearly titled.

24. The council said that the Inspector's Reports should be available from East Hampshire District Council. It confirmed that it does not hold them and explained that it has relied on photocopied extracts held by a private individual but these extracts are not held by the council. It also confirmed that the email entitled 'WG2 – minutes / actions' is the same document as that referred to in the minutes of the Steering Group of 8 October 2015, that being the notes of a meeting on 7 October 2015.
25. In relation to the searches carried out, the council said that it searched information published on the Liss Village Neighbourhood Plan website, paper records, emails and word documents kept by the administrator of the Liss Village Neighbourhood Plan and emails held by the project manager. It explained that these are the only records that exist of work on the plan and said that no search terms were used but the files and titles were searched manually. However, because the council also said that many individuals have working drafts of documents and copies of emails on their own laptops, the Commissioner sought further clarification from the council. The council then explained that the individuals referred to are private individuals who have volunteered to work on the plan including the Parish Clerk and that the information is not held by the council. It was confirmed that the Parish Clerk's confirmed that his own laptop has been searched.
26. After the Commissioner had received the response to his enquiries from the council, the complainant asked her to check with the council whether there are any comments or reports/documents/analysis from Working Group 4 that relate to his site that have not yet been provided. The council confirmed to the Commissioner that none of the work of Working Group 4 relates to the complainant's site and that Working Group 4 has published information on the Liss Village Neighbourhood Plan website.
27. The council also stated that information is mainly held electronically but with some paper records and all information is held locally on the website and on laptop computers. It said that there are no networked

resources other than emails. The council confirmed that no information has been deleted or destroyed.

28. 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 said that it is not aware of any such requirements.
29. 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.
30. Given the history of this case and case reference FER0618238, the Commissioner appreciates that the complainant may remain sceptical that further information does not exist. However, 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 any further information relevant to this request. The council has carried out relevant searches, stated that it does not have any statutory requirements to hold further information, and confirmed that no information has been deleted or destroyed. The Commissioner 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(1) in relation to such information.

### **Regulation 5 – Time for compliance**

31. Regulation 5(1) states that a public authority that holds environmental information shall make it available on request. Regulation 5(2) states that this information shall be made available as soon as possible and no later than 20 working days after the date of receipt of request.
32. The council received the initial request on 21 December 2015. On 6 February 2016 the council provided information which it said was already in the public domain, and on 2 June 2016, in response to the decision notice for case reference FER0618238, it referred the complainant to information that was put on the Liss Neighbourhood Development Plan website on 21 March 2016. In addition, on 31 August 2016 further information was provided. Each of these disclosures occurred after the twentieth working day following the date of receipt of the request with some of the information only being provided after over 8 months. Therefore, the council did not respond to the request within the statutory time limit in breach of regulation 5(2).



## Other matters

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33. The Commissioner found it necessary to seek clarification from the council during this investigation and that in case reference FER0618238. He is concerned about the delays in responding to the request and wishes to comment that the piecemeal disclosure of information in this case has not been helpful for either the complainant or the Commissioner in determining whether all the requested information has been provided. The council should ensure in future that its first step upon receiving an information request is to identify all the relevant information it holds and provide it unless a relevant exemption applies. The council should also ensure that its responses to the Commissioner's enquiries are as thorough as possible.

## Right of appeal

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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 1234504

Fax: 0870 739 5836

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

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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** .....

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