

## Environmental Information Regulations 2004 (EIR)

### Decision notice

**Date:** 20 March 2017

**Public Authority:** Medway Council  
**Address:** Gun Wharf  
Dock Road  
Chatham  
Kent  
ME4 4TR

#### Decision (including any steps ordered)

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1. The complainant has requested information from Medway Council ("the Council") about a specific planning reference. The Council disclosed information in response. The complainant contested that further information was held.
2. The Commissioner's decision is that the Council has disclosed all relevant held information. However, by providing an internal review outside of 40 working days, the Council failed to comply with the requirement of regulation 11(4) of the Environmental Information Regulations ("the EIR").
3. The Commissioner does not require the public authority to take any steps.

#### Request and response

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4. On 6 April 2016, the complainant wrote to the Council and requested information in the following terms:

*Very substantial further submissions have just been posted online by your Council after being received by the applicant. Please can you:*

- a) Advise how and why these further submissions from the applicant were requested by Medway Council.*
  - b) Supply copies of all letters, emails and telephone notes sent and received by Medway Council and going to and from the applicant or agent since February 24<sup>th</sup> 2016.*
5. The Council responded on 6 May 2016. It disclosed held information.
  6. The complainant requested an internal review on 12 May 2016.
  7. Following an internal review the Council wrote to the complainant on 5 August 2016. It stated that no further information had been identified.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 29 June 2016 to complain about the way his request for information had been handled.
9. The Commissioner considers the scope of this case to be the determination of whether further relevant information is held by the Council, and whether the Council has complied with regulation 11(4).

### **Reasons for decision**

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#### **Is the information environmental?**

10. Information is "environmental" if it meets the definition set out in regulation 2 of the EIR. Environmental information must be considered for disclosure under the terms of the EIR. Under regulation 2(1)(c), any measures that will affect, or be likely to affect, the elements referred to in 2(1)(a), will be environmental information. The requested information relates to a planning application. The Commissioner therefore considers that the request should be dealt with under the terms of the EIR.

#### **Regulation 5(1) – Duty to make information available on request**

11. Regulation 5(1) states that any person making a request for information is entitled to have that information communicated to them. This is subject to any exceptions that may apply.

*The complainant's position*

12. The complainant contests that further records, and in particular communications between the Council and the planning applicant, must be held as a matter of course.
13. The reason for this is that the planning applicant submitted further documents in support of their application, and the complainant believes that some contact from the Council is likely to have prompted this. The complainant has provided the Commissioner with an email (from the Council to a third party) in which the Council confirms that further documents (namely 'ecology information') have been sought from the planning applicant.

*The Council's position*

14. The Council has informed the Commission that searches have been undertaken on the public access database for planning applications, the relevant case officer's mailbox, and the Head of Service's mailbox, a shared network drive, and the electronic and paper files maintained for the planning application. The Council has confirmed that it would expect all relevant information to be contained in these locations.
15. Where electronic records have been searched, the Council has used the following search terms and parameters: application reference number, site address, applicant name, agent name, and date range.
16. The Council has a statutory duty, under the Town and Country Planning Act, to retain records relating to planning applications. Consequently, no necessary records will have been destroyed.
17. The Council has provided the Commissioner with a publically available letter from the planning applicant in which they confirm that the further documents are being submitted following comments raised by the Council at a meeting held on 17 February 2016. In response to this submission, the Council was asked to clarify whether the searches undertaken would have retrieved any recorded information relating to this meeting, such as minutes or notes. The Council subsequently confirmed that its searches would have identified any such information. The Council also confirmed that the meeting was not recorded through minutes, and that if any informal notes had been made by the involved officer, these may have been destroyed following the officer's departure from the Council.

*The Commissioner's conclusion*

18. The Commissioner must decide on the balance of probabilities whether information is held by the Council that would fall within the scope of the request.

19. The terms of the EIR do not impose an obligation on a public authority to create information in order to comply with an information request. Equally, the EIR do not specify what information a public authority must record as part of its administration; a public authority must decide this in accordance with any business reasons and statutory obligations.
20. The Council has provided a clear explanation of the searches that it has undertaken in response to the request. The Council has also confirmed that any recorded information related to the meeting held on 17 February 2016 would have been identified by these searches. Whilst it is possible that informal notes may have been made by an involved officer at this meeting, it is likely that any such notes may have been destroyed following the officer's departure from the Council.
21. Having considered the above factors, and in the absence of any conflicting evidence, the Commissioner must conclude that it is unlikely that further information is held by the Council.

### **Regulation 11 – Internal review**

22. Regulation 11(1) provides that an applicant may make representations to a public authority, if he or she considers that the authority has failed to comply with the requirements of the EIR in relation to the request.
23. Regulation 11(3) requires that the public authority consider the complainant's representations, along with any supporting evidence provided by the complainant, and to decide whether it has complied with the requirements of the EIR. Finally, regulation 11(4) requires that the authority notify the applicant of its decision in relation to the applicant's representations no later than forty working days after receipt of those representations.
24. In this case, the Council received the request for an internal review on 12 May 2016. Although the request did not specifically state that an internal review was sought, it clearly expressed dissatisfaction with the Council's response. The Commissioner's guidance on regulation 11 explains to public authorities that *"any correspondence in which the requester has expressed dissatisfaction over the handling of their request should be addressed through the internal review procedure."*
25. As the Council did not provide its internal review until 5 August 2016, the Commissioner finds that it breached regulation 11(4).

### **Right of appeal**

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26. 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)

27. 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.
28. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**