

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

**Date:** 25 May 2017

**Public Authority:** Warwickshire County Council  
**Address:** Shire Hall  
Warwickshire  
CV34 4SA

**Decision (including any steps ordered)**

---

1. The complainant has asked Warwickshire County Council's for copies of minutes of meetings which are referred to in the Local Member and Portfolio Holder Briefing "Proposed Free Schools & Rokeby Primary School" document. The complainant particularly seeks the minutes of the meeting which took place on 27 November 2015. The Council informed the complainant that it does not hold minutes or notes of the meeting of 27 November on the grounds that it was informal and not a meeting of a decision making group.
2. The Commissioner has decided that Warwickshire County Council does not hold any minutes or notes for the meeting held on 27 November 2015. By informing the complainant of this fact the Council has complied with Regulation 5(1) of the EIR. Due to its failure to complete its review of the complainant's request within forty working days, the Commissioner has decided that the Council has contravened Regulation 11(4) of the EIR.
3. The Commissioner requires no further action in this matter.

**Request and response**

---

4. On 3 August 2016, the complainant wrote to Warwickshire County Council and requested information in the following terms:  
  
"Please supply minutes of the meetings referred to in the Local Member and Portfolio Holder Briefing Proposed Free Schools & Rokeby Primary School. The Council was contacted in November 2015 regarding site

options and the first meeting took place on 27 November 2015. The Option to develop a proposal for the Rokeby site arose during this meeting."

5. The Council responded to the complainant's request on 10 August 2016, advising her that the requested information is not held by the Council. The Council informed the complainant that, "the meeting was informal, no minutes were taken".
6. On 27 August 2016, the complainant asked the Council to carry out an internal review of its response.
7. The Council completed its review and wrote to the complainant on 28 October 2016 to advise her of its outcome. The solicitor who undertook the review determined that the Council did not hold the information requested by the complainant on 3 August.
8. The complainant was informed that enquiries had been made to determine whether the Council holds the information the complainant seeks and that the responses to these enquiries confirmed that there were no notes.

### **Scope of the case**

---

9. The complainant contacted the Commissioner 10 December 2016 to complain about the way her request for information had been handled.
10. The Commissioner has investigated the Council's handling of the complainant's request and whether it holds the information which the complainant seeks. This notice sets out the Commissioner's decision.

### **Reasons for decision**

---

11. The Council has considered the complainant's request under the provisions of the Environmental Information Regulations 2004 ("the EIR").
12. Regulation 2 of the EIR states that –  
  
    "...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;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(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;"

13. The Commissioner has considered the nature of the information which the complainant has asked for. She accepts that the information, if it exists, would satisfy the requirements of item (c) above insofar as it would record a measure which would affect land and the landscape.
14. Under Regulation 5(1) of the EIR a public authority is required to 'make available on request' information which is environmental information.
15. The Commissioner has sought to determine whether the Council holds information which the complainant seeks.
16. In making this determination, the Commissioner applies the civil test of the balance of probabilities. This test is in line with the approach taken by the First Tier Tribunal (Information Rights) when it has considered whether information is held in cases which it has considered in the past.
17. The Commissioner has investigated this complaint by asking the Council a number of questions about the searches it has made to locate the information which the complainant seeks. The Commissioner's investigation also included questions about the possible deletion/destruction of information which might be relevant to the complainant's request.

#### *The Council's representations*

18. The Council has clarified the nature of the meeting referred to by the complainant in her request: It has informed the Commissioner that it was not a meeting of a decision making group.
19. Due to the informal nature of the meeting, there are no statutory requirements for the Council to create or retain the information which the complainant seeks.

20. Notwithstanding this, the Council's Information Rights Officer contacted the Education Department to request any minutes that might have been made at the meeting of 27 November. This enquiry was answered by the Head of Education who was the most senior officer present at that meeting.
21. The Head of Education confirmed the informal nature of the meeting and also that there were no minutes taken.
22. When the Council reviewed its handling of the complainant's request, the Information Rights Officer was asked whether the Council held any information about the meeting which had been overlooked, such as informal notes made at the time. Having made this enquiry, the Council's reviewer was able to confirm that no informal notes had been made.
23. The Council has advised the Commissioner that, had there been minutes/notes for the meeting of 27 November, the requested information would likely have been held as manual records rather than being held electronically.
24. The Council has assured the Commissioner that it has neither deleted nor destroyed any information which relates to the complainant's request and therefore it has not been necessary for the Council to refer to its records management policy.

*Regulation 9 – duty to provide advice and assistance*

25. The Council has advised the Commissioner that it had contacted the attendees of the 27 November meeting in order to establish whether there are any informal notes. Having been assured that no such notes were made, and having advised the complainant of this, the Council has provided advice and assistance relevant to her request.

*The Commissioner's conclusion*

26. The Commissioner has considered the representations made to her by the Council in respect of this complaint. She has decided that, in the absence of any evidence to the contrary, and on the balance of probability, the Council does not hold the information which the complainant has asked for.
27. The Commissioner has therefore decided that the Council has complied by Regulation 5(1) of the EIR by informing the complainant that it does not hold the information specified in her request.

*Regulation 11 – representations and reconsideration*

28. The Commissioner has noted the time taken by the Council to conduct its review of this request.

29. The Council has explained to the Commissioner why it was not able to complete its internal review within twenty working days, and why it was necessary to extend this by a further twenty days.
30. The Commissioner understands why the Council's reviewer was required to consult with the attendees of the meeting in order to determine whether they held informal notes. She fully accepts the Council's the need to provide the complainant with the fullest response possible and she notes the Council's apologies to the complainant for its delay.
31. In this case, the Commissioner is satisfied that the Council has acted in good faith: The delay appears to condense to a simple matter of obtaining answers/confirmation from members of its own staff in a timely manner. Consequently the time taken by the Council to conduct its internal review appears to the Commissioner to be unacceptably excessive.
32. Given that the Council exceeded the forty working days period required by Regulation 11(4), the Commissioner has decided that the Council has contravened this Regulation.
33. In view of this contravention, the Commissioner advises the Council to examine its internal review procedures to ensure that it meets the forty twenty working days response time in the future.

## **Right of appeal**

---

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** .....

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**