

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

**Date:** 20<sup>th</sup> April 2017

**Public Authority:** North Dorset District Council  
**Address:** Nordon  
Salisbury Road  
Blandford Forum  
DT11 7LL

**Decision (including any steps ordered)**

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1. The complainant has requested copies of correspondence made on a planning development at Bourton Mill in North Dorset. During the course of the Commissioner's investigation the council disclosed some correspondence however the complainant considers that further information should be held.
2. The Commissioner's decision is that council was correct to say that it does not hold any further information for the purposes of Regulation 5(1).
3. The Commissioner has however decided that the council did not comply with the requirements of Regulation 5(2).
4. The Commissioner does not require the council to take any steps.

## Request and response

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5. On 7 June 2016, the complainant wrote to council and requested information in the following terms:

*"A copy of the reply to [name redacted]'s letter regarding site safety at Bourton Mill and also, for copies of other correspondence which at present we cannot identify because there are letters written by myself to the council regarding Bourton Mill which have not appeared on their website and that there may be others of relevance,"*

6. The council did not respond to the request. The Commissioner therefore wrote to the council on 22 July 2016 reminding it of its obligations under the Act.
7. The council responded to the Commissioner on 3 August 2016 providing a copy of a letter which it considered was all that was held in responding to the first part of the request, but stating that the request itself was unclear. The Commissioner tried to clarify the request to the council, but also informed it that if it was still unsure what information was being requested to seek clarification from the complainant.
8. On 16 August 2016 the complainant confirmed that he had still not received any information from the council.

## Scope of the case

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9. As noted above, the complainant initially contacted the Commissioner on 13 July 2016 to complain about the way his request for information had been handled. The Commissioner considers that the complaint at that time was that the council had failed to provide an adequate response to the request for information as required by the Regulations.
10. During the course of the investigation the council wrote to the Commissioner and initially provided her with a copy of all of the correspondence which it located which it had previously had with the complainant. It said that it considered that this should respond to the request and asked the Commissioner to ask the complainant if he was satisfied with the response. The Commissioner wrote back to the council on 16 December 2016 to state that, having checked with the complainant, his request encompassed all correspondence regarding the development at Bourton Mill, not just the correspondence it has had with the complainant. Specifically the complainant was seeking

correspondence which it had received regarding Bourton Mill that had not been published on the council's planning portal.

11. She also asked the council to provide further information in respect of the council's response to part 1 of the request given that the council has simply stated that no information was held other than the letter which it had provided to the Commissioner in response to the initial request.
12. The council reconsidered its position and identified further correspondence which it considered fell within the scope of the request. It provided an index of this to the Commissioner and agreed for her to contact the complainant with a view to it disclosing any information he wished from the index, barring one document. This document was withheld on the basis that it was subject to legal professional privilege (i.e. it argued that Regulation 12(5)(b) was therefore applicable).
13. The complainant asked the Commissioner to arrange for all of the available correspondence to be provided to him, which the council subsequently did on 14 March 2017. The Commissioner then asked the complainant if he was satisfied with the response and whether he was willing to withdraw his complaint.
14. The complainant however stated that he believed further information must be held by the council and therefore asked the Commissioner to consider whether this was the case or not. The Commissioner asked the complainant to provide her with the reasons why he believed this to be the case, which he did on 30 March 2017.
15. The Commissioner therefore considers that the complaint is whether further information is held by the council. The complaint also relates to the time which the council took to respond to the request.

## **Reasons for decision**

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### Is further information held

16. Amongst other things, Regulation 5 provides that:

#### Regulation 5(1)

*Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.*

Regulation 5(2)

*Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.*

17. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
18. In such cases 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.
19. The Commissioner therefore asked the council to confirm what searches it has carried out for the information and to explain why it considers that relevant information is not held.
20. The council responded to the Commissioner's questions regarding the searches it has carried out to locate relevant information.
21. It said that for planning purposes there is a planning portal where correspondence would be logged or published.
22. The council explained that searches were made of the planning portal, the planning department of the council, the office of the previous Chief Executive, the current Chief Executive, the office of the Assistant Chief Executive of the council, and also the monitoring officer for relevant information.
23. The searches included electronic data, and information stored on personal computers where it was appropriate to search those computers. Searches also included electronic data stored in relation to the above named officers or the Portal.

24. The council said that it believes that relevant information would be held mostly in electronic form but that some may possibly be held manually.
25. It said that it is no longer possible to trace any further information that might have been held because a number of officers have left the organisation, such as the person formerly in charge of Development Control at the council, and the former Chief Executive. It said that not all of the correspondence regarding Bourton Mill which might have been held at one time may be accessible as these senior officers' computers can no longer be searched.
26. It said however that there are no records or any documents being deleted or destroyed.
27. It said that it would normally follow its records management policy (it provided a copy of this document to the Commissioner). In general terms correspondence held by the Council tends to be for a minimum of 6 years but that that would depend on the precise nature of the document.

The complainant's argument that information must be held

28. The complainant's main point was that he was aware that further correspondence must have been held in the past as there was evidence of this from documents he has received from the council as a result of his request and via the council's publication of correspondence on its public planning portal.
29. He notes for instance, that the letter he mentions in his initial request did not appear on the council's planning website until a year after it was dated and that letter refers to other correspondence which has not subsequently been published on the planning portal.
30. Specifically, the complainant has outlined that his request refers to a reply to (the officer named) which is referred specifically to in the letter of 21 January 2015.
31. The complainant also pointed out that in that letter the officer states: "I also notice that in the first paragraph of the letter it is stated '*You will recall that some time ago I wrote to you expressing a number of concerns about the state and condition of Bourton Mill and its impact on the local community*'". Again he notes that he has not received a copy of that letter.

## Conclusions

32. The complainant has provided specific evidence that at one point the council must have received further information which it has not disclosed to him as a result of this request. The Commissioner accepts that this evidence points to a conclusion that other information was held by the council at one time.
33. However it is clear that the council has carried out searches for this information and has been unable to locate any further information falling within the scope of the request.
34. The Commissioner notes that the question is not whether information 'should' be held, or was held. It is a question of whether in fact it is held by the council at the time that the request is received by the authority. As noted above, the test for her to consider is whether, on a balance of probabilities, the information is held.
35. The council has responded to the Commissioner's questions and provided reasons why some correspondence may no longer be held, and why there may be no record of its deletion. In any event, it is clear that no further relevant information has been located as a result of the council searches. The council's description of its searches appear adequate and appropriate to determine, on a balance of probabilities, whether further information is held or not.
36. The correspondence was with the current Assistant Chief Executive of the council. The council has confirmed that his office has searched for relevant information on more than one occasion and it has disclosed the information they located as part of the disclosure to the complainant on 14 March 2017.
37. The Commissioner considers that the response of the council raises concerns about the adequacy of the council's records management procedures in this respect. It appears that correspondence of significance appears to have been deleted, or is no longer accessible to the council following senior officers leaving the employ of the council. No record of the deletion of that correspondence appears to have been made. It should be noted that the information relates to the safety of the site in question and does not therefore appear to be mundane in nature.
38. However, no further information has been located despite a number of searches. The Commissioner therefore considers that the council was, on a balance of probabilities, correct to say that it does not hold any further information in respect of this request.

Regulation 5(2)

39. As noted above, the Regulation requires that information is provided to the requestor within 20 working days of the receipt of the request unless that time is extended by the council by written notification under Regulation 7.
40. In this case the council did not respond to the complainant's initial request of 7 June 2016 until it provided the information to the complainant on 14 March 2017. This falls outside of the relevant 20 day period.
41. The Commissioner therefore considers that the council did not comply with the requirements of Regulation 5(2).

**Other Matters**

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- a) In the body of this decision notice the Commissioner has expressed concerns that documents of potential importance may have been deleted or are no longer accessible to the council with no record having been made of this.
- b) The Commissioner will therefore write to the council separately regarding its records management policies following this issue.

## Right of appeal

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42. 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)

43. 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.
44. 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**