

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

Decision notice

Date: 16 January 2018

Public Authority: Vale of White Horse District Council
Address: 135 Eastern Avenue
Milton Park
Milton
OX14 4SB

Decision (including any steps ordered)

1. The complainant has requested planning, and related information, regarding specific addresses. The Commissioner's decision is that Vale of White Horse District Council does not hold any further information relevant to the requests. She does not require any steps to be taken to ensure compliance with the legislation.

Request and response

2. On 25 October 2016, the complainant wrote to Vale of White Horse District Council ('the council') and requested information in the following terms:

"..can you supply all the information you have relating to planning, planning applications, refusals, planning enforcement, breaches of planning, building control notices and everything else you have relating to the properties at 2, 4, 6 and 6a High Street, Steventon from 1964."
3. On 26 October 2016 the complainant made an additional request for information:

"Further to my request for printed information on OX13 6RS, could you please supply the information for 8 and 10 High Street, Steventon as they are [details redacted]. Could you make sure it includes all objections, pictures and legal action threatened or taken."

4. The council responded on 22 November 2016. It provided all the documentation it holds for both enforcement and building control. In relation to planning information, the council informed the complainant that there are 35 planning applications from 1964 and provided the references and details of which of those are fully available online and how to access them. It also informed the complainant which of those planning applications it holds a case file for which is not publically available. The council said that there are 73 documents (a total of 759 pages) which the complainant cannot view online and due to the amount of time it would take to process this part of the request (i.e. reading through the documents and redacting any confidential, personal or commercially sensitive information) it is considered manifestly unreasonable under regulation 12(4)(b) of the EIR. It also said that if the complainant could reduce the planning part of his request it would be happy to look at it again and asked whether there is a specific planning application or specific documents he has a particular interest in.
5. The complainant expressed dissatisfaction with the response on 1 December 2016 stating that he wants everything that was missing including internal documents that were never put on the council website.
6. During a telephone conversation with the council, the complainant reduced his request to 13 planning applications.
7. On 23 December 2016, the council responded to the revised request. It said that the request is still manifestly unreasonable under regulation 12(4)(b) of the EIR because to allocate an officer to process the request would disrupt its ability to deliver its core functions. It explained that most of the applications the complainant chose not to include were applications that are fully viewable on its website therefore he did not reduce the request sufficiently. As per its previous response, it said that if there are specific documents the complainant would like to request it would be happy to provide these.
8. The complainant was given an appointment to view the documents on 28 February 2017 but said that he did not see any of them and therefore requested another appointment but said he was not given one.
9. Following a telephone call from the Commissioner, on 31 March 2017, the council provided an internal review response in which it maintained its position that regulation 12(4)(b) of the EIR applies.
10. The Commissioner is aware that there has been additional correspondence between the council and the complainant regarding this matter. However, for clarity, only correspondence which is most relevant to this particular complaint is detailed above.

Scope of the case

11. The complainant contacted the Commissioner on 4 March 2017 to complain about the way his request for information had been handled.
12. During the course of the Commissioner's investigation, on 19 October 2017, the council informed the complainant that as part of an ongoing project in which it is digitizing and publishing historic planning records, the history he requested regarding the following planning applications can now be found on the council website:

- * P00/V0138
- * P04/V1051/A
- * P04/V0354/A
- * P03/V0060

It also said that it will review the unpublished documents on the remaining applications (P15/V0401/FUL and P14/V1665/FUL) and provide him with copies (redacted if necessary).

13. The complainant responded on 20 October 2017. He commented that the council is 'avoiding the original questions and still not supplying the information asked for again' before going into specific details.
14. In response, on 2 November 2017, the council informed the complainant that the information on its website (<http://www.whitehorsedc.gov.uk/java/support/Main.jsp?MODULE=ApplicationDetails&REF=P00/V0831#exactline>) is all that it holds re planning application P00/V0831 and that this includes any surviving internal correspondence, all of which is held in electronic form and published on the website.
15. On 13 November 2017 the council sent the complainant a disk containing all unpublished documentation held on its system for P15/V0401/FUL and P14/V1665/FUL and confirmed that it has now disclosed everything it holds on this matter.
16. The Commissioner wrote to the complainant on 30 November 2017 requesting that he withdraw his complaint given that the council had now provided all the requested information, albeit outside the statutory time frame for compliance.
17. On 1 December 2017, the complainant responded to the Commissioner. He expressed his view that there must be more information in relation to planning applications P00/V0831 and P15/V0401/FUL.

18. Therefore, the Commissioner has considered whether the council holds further information in relation to planning applications P00/V0831 and P15/V0401/FUL.
19. The Commissioner has informed the complainant that it is not within her remit to look at whether there has been any breaches of planning and that she can only look at access to recorded information.
20. The council has informed the Commissioner that the further questions raised by the complainant on 20 October 2017 are outside the scope of the initial request and therefore will be treated as a new request. The Commissioner has advised the complainant that if he is unhappy with the response to his further questions he will need to request an internal review from the council, preferably detailing why he is not satisfied in terms of the information provided.

Reasons for decision

Regulation 5 – Duty to make environmental information available on request

21. Regulation 5(1) of the EIR states that a public authority that holds environmental information shall make it available on request.
22. 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 is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
23. The Commissioner made detailed enquiries to the council in order to assess whether further information is held. She requested details regarding 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 following comments made by the complainant:

"I am not the least bit satisfied with your or the VWHDC response to release all the information requested to do with planning application

P00/V0831. There must be more that has not been shown to me or is on the council's website. Where did [name redacted] get the information that there was a breach of planning and the planning conditions had not been met and a Building Control Notice should have been served and was not. Where are all the copies of the correspondence that supposedly went on between 2002 and 2005 referred to in the email of February 13th 2015. Where has this information been hidden for twelve years? Where are the reports into it after numerous complaints about it that have allowed it to remain there?

Also I want a proper investigation into planning application P15/V0401/FUL which should have been done as I have requested a few times. There is no doubt it is a breach of planning as it is not installed as the planning permission that was passed, it was not installed years ago as the application stated but in late 2011, it does emit noxious fumes contrarily to the planning application, it is not drawing in fresh air to a store room and seating area but venting a griddle as mentioned in one of the councils emails and does not comply with the VWHDC guidelines for a cooking extractor. The council were informed of all these facts yet they still passed it. There must be more than is shown on the VWHDC website as I have complained numerous times about this."

24. The council explained that it searched its database, 'Ocella', which holds details of building control and planning records including enforcement, and that it also searched its 'Images' drive which holds scanned copies of historic correspondence and other documentation. It said because the request was for information about specific properties, the searches were conducted using the relevant reference numbers, by which all material is indexed, for planning, enforcement and building control. It also explained that it did not search local information on personal computers as the council's policy is for officers to hold information only on shared network resources and most of its staff use thin client devices which do not have any local storage.
25. The council said that it did not search its email system as the email system has been changed twice since the period in question and it does not have an email archive going back to the period 2000 to 2005. The Commissioner noted that P00/V0831 dates back to 2000 and P15/V0401/FUL dates back to 2015. She therefore asked the council whether it considers that a search of its email system could possibly retrieve information within the scope of the request relating to P15/V0401/FUL. The council reiterated that it has provided the complainant with all information held on the case file relating to this planning application. It said that this includes any relevant email, copies of which are held on the case file specifically so they are not lost when

planning officers move on and therefore it does not consider that a search of its email system would reveal any records relating to this planning application which have not already been identified and provided to the complainant.

26. It said that any further information would be held electronically because it does not hold manual records dating back to the time period in question (2000 to 2005) as it has been working electronically for several years. It confirmed that there are no paper records to search because even if it had not previously moved to electronic ways of working, the council offices were destroyed by fire in January 2015 and only very limited paper records could be salvaged.
27. It further explained that staff from the planning department and from the historic data capture team were consulted. It said that it is coming to the end of a project in which historic records are being transferred from microfiche (which did survive our office fire) and put on line and that this is how some of the planning history became available after the complainant made his initial request for information. The council confirmed that it has checked the microfiche to ensure that everything held there in relation to the properties in question has now been made available on the council web site.
28. In relation to whether any recorded information was ever held relevant to the scope of the complainant's request but has since been deleted or destroyed, the council said that it is very likely that there was recorded information held regarding building control and planning enforcement. However, it explained that it changed its database system, introducing 'Ocella' in April 2012, and that decisions were taken at that time not to migrate some historic information. It said that a copy of the previous database, 'Uniform', was held for several years but is no longer available. It confirmed that it has no specific record of the destruction of documents that may have been within the scope of the request.
29. In relation to what the council's formal records management policy says about the retention and deletion of records of this type, the council explained to the Commissioner that its records management policy is not explicit. It said that its current approach is to retain such records indefinitely but that when it changed systems in 2012 the history was not migrated to the new database.
30. 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 there are no statutory requirements but while an enforcement case is still open the information should be held. However, the council confirmed to the Commissioner that there are no open

enforcement cases and it has already provided the history of previous enforcement cases to the complainant.

31. The Commissioner also considered whether the council had any reason or motive to conceal the requested information. She understands that the complainant believes that information is being withheld in order to cover up action that was not taken by the council but should have been. However, she has not seen any evidence of this and it is not within her remit to adjudicate on planning matters. The Commissioner 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.
32. 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 conducted what appear to be adequate searches for the information and confirmed that it has no statutory duty or business purpose to hold further information. She considers that the council's explanations as to why further information may have been held at one time but has since been destroyed to be reasonable in the circumstances. She has taken into consideration that council offices were destroyed by fire in January 2015 and that surviving microfiche files have been searched. 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 is any evidence of a breach of regulation 5.

Right of appeal

33. 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

34. 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.
35. 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
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