

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

Decision notice

Date: 24 September 2018

Public Authority: Wiston Parish Council

Decision (including any steps ordered)

1. The complainant has requested information regarding a draft neighbourhood plan drawn up by group of parish councils.
2. The Commissioner's decision is that Wiston Parish Council ("the Parish Council") holds no further information beyond that which has already been provided to the complainant. However, it failed to carry out a reconsideration of its initial response to the request when asked to do so by the requestor and has therefore breached Regulation 11 of the EIR.
3. As the Commissioner is satisfied that the complainant in this case has either been provided with, or has access to, all the information that the Parish Council holds, no further steps are required.

Background

4. In 2014 four parish councils agreed to work together as a 'cluster' to prepare a single neighbourhood development plan for their respective area. The four authorities comprised of Steyning, Wiston, Ashurst and Bramber parish councils, and were given the acronym 'SWAB'. They set up a steering committee comprised of members of some parish councils together with a number of members of the public.
5. SWAB hired consultants, AiRS, and another organisation to aid in the development of the neighbourhood plans for their area. It also created a Dropbox facility to allow the member councils to share documents relating to the process.

6. The SWAB plan collapsed in 2017 before the draft plan was issued when Wiston Parish Council withdrew from the cluster. Following this, the councils within SWAB chose not to take the draft plan forward. They chose instead to work towards submitting individual neighbourhood development plans.
7. In late summer of 2017, the complainant contacted all 4 of the SWAB councils to make identical requests to each of them.¹

Request and response

8. On 14 August 2017, the complainant wrote to the Parish Council and requested information in the following terms:
 - 1) *"Please let me have the most up to date version of the SWAB draft pre-submission document which sets out what development proposals the public was to be consulted on if the process had not been halted.*
 - 2) *"(External Documents) Going back as far as the first version of the "Wiston Estate Steyning Concept Note", which is believed to be February 2013– please let me have any file notes, memoranda, briefing papers, emails, other correspondence, and any other documentation exchanged between The Wiston Estate, the Goring Family or any consultants retained by them on the one hand and with SWAB and/or any of its constituent councils and/or any councillor and/or SWAB's consultants on the other hand which record any intentions or desires or plans concerning possible development at Bayards Fields including, but not limited to, the Wiston Whole Estate Plan whether in terms of content or in terms of intended publication.*
 - 3) *"(Internal Documents) Over the same period - please let me have any file notes, briefing papers, minutes, memoranda or other*

¹ The Commissioner received complaints in relation to all four requests and in relation to a separate but related request. She has published Decision Notices in two of those cases (below). A third decision notice had been served, but not published, at the date that this notice was issued:

<https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2259187/fer0701278.pdf>

<https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2259685/fs50719123.pdf>

documents relating to any meetings or discussions in connection with parish council meetings, SWAB meetings and workings, or working parties, which may have taken place within or between parish councils, councillors or clerks concerning the Wiston WEP or concerning possible development at Bayards Fields or concerning the appointment of the SWAB consultants.

"NB I do not require any document, such as minutes or agendas, which currently appears on any parish council or the SWAB website and so are already in the public domain."

9. The Parish Council responded on 18 August 2017. It stated that it did not hold any information as it had (by that point) left the SWAB cluster.
10. The complainant requested an internal review on 5 September 2017. In particular, he pointed to the existence of a Dropbox account as evidence that further information might be held on behalf of the Parish Council even if the Parish Council did not, itself, have possession.
11. Following the Commissioner's intervention, the Parish Council responded to the complainant on 26 October 2017 to say that "this Parish Council does not have an internal review process." It instead suggested the complainant contact the Commissioner.

Scope of the case

12. The complainant contacted the Commissioner again on 31 October 2017 to complain about the way his request for information had been handled.
13. The scope of the Commissioner's investigation has been to determine whether further information is held by, or on behalf of, the Parish Council.

Reasons for decision

Procedural Matters

Is the requested information environmental?

14. Regulation 2(1) of the EIR defines environmental information as being information 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)...as well as measures or activities designed to protect those elements;*
 - (d) reports on the implementation of environmental legislation;*
 - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and*
 - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);*
15. The Commissioner has seen some of the requested information in the course of the investigating other complaints and can make a broad assumption that any remaining information (if it existed) is information relating to the development of a large area of land, she believes that all the information will fall under one or more of the categories outlined above. For procedural reasons, she has therefore assessed this case under the EIR.

Reconsideration (internal review)

16. Regulation 11 of the Regulations states that:

- (1) Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant's request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request.*
- (2) Representations under paragraph (1) shall be made in writing to the public authority no later than 40 working days after the date*

on which the applicant believes that the public authority has failed to comply with the requirement.

- (3) *The public authority shall on receipt of the representations and free of charge—*
 - (a) *consider them and any supporting evidence produced by the applicant; and*
 - (b) *decide if it has complied with the requirement.*
 - (4) *A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the date of receipt of the representations.*
 - (5) *Where the public authority decides that it has failed to comply with these Regulations in relation to the request, the notification under paragraph (4) shall include a statement of—*
 - (a) *the failure to comply;*
 - (b) *the action the authority has decided to take to comply with the requirement; and*
 - (c) *the period within which that action is to be taken.*
17. The Parish Council refused to carry out an internal review (or reconsideration) when asked saying it had no such process. It therefore breached Regulation 11 of the EIR.

Regulation 5(1) – Duty to disclose information

18. Regulation 5(1) states that: *"a public authority that holds environmental information shall make it available on request."*
19. Regulation 3(2) states that:
- (2) *For the purposes of these Regulations, environmental information is held by a public authority if the information—*
 - (a) *is in the authority's possession and has been produced or received by the authority; or*
 - (b) *is held by another person on behalf of the authority.*
20. 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 arguments. 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. Finally, she will consider any reason why it is inherently likely or unlikely that information is not held.

21. 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.
22. The Parish Council has stated that it holds no information in its own right. Much of the SWAB information has now been published and is therefore available to the complainant.
23. The Parish Council also checked its own records to satisfy itself that no further information, within the scope of the request, was held. This involved checking with the Parish Councillors themselves as well as searching the Parish Council's small record archive. The Parish Council has stated that it holds no further information.
24. The Commissioner considers that the searches which the Parish Council has carried out in respect of its own files were relevant, accurate and thorough. She considers that such searches should have located all information within the scope of the request that was held individually by the Parish Council.
25. The Commissioner thus concludes that the Parish Council itself holds no information beyond that already published by the SWAB cluster.

Information held on behalf of the Parish Council by others

26. Whilst the Commissioner was investigating this complaint, she was also investigating a parallel complaint involving an identical request made to another of the SWAB parish councils. As a result of her investigations in that case, it was discovered that the consultants hired by the SWAB cluster still held information relating to the draft plan and information was held in a Dropbox account that was accessible to all the SWAB councils.
27. The Commissioner's guidance on shared document repositories states that:²

² https://ico.org.uk/media/for-organisations/documents/1169/determining_whether_information_is_held_foi_eir.pdf

"there could be situations where a number of public authorities have contributed information to a central, electronic repository and could access each other's information, but on a read-only basis. For the purposes of FOIA and the EIR, only information that the public authority had put into the repository would be held."

28. The Parish Council has stated in writing that neither it, nor its representative on the SWAB group ever uploaded documents to the Dropbox, or even accessed those documents which were stored there. In any event, the Commissioner notes that the complainant has previously been provided with the information contained in the Dropbox by the other SWAB councils
29. Given the fact that the Commissioner considers that the complainant has either received, or has ready access too, all the information which is held on behalf of the Parish Council (via the aforementioned linked cases considered in paragraph 7 of the notice), her view is that no further information is held beyond that which the complainant already has.

Other matters

30. The Commissioner is concerned that, 13 years after the implementation of both the Freedom of Information Act and the Environmental Information Regulations, the Parish Council has not developed a process for reconsidering responses to requests made for information.
31. Whilst an internal review is not a statutory part of the FOIA, it is a statutory part of the EIR. Furthermore, the Commissioner considers that good internal reviews are helpful to both requestors and public authorities as they can often resolve many of the issues which arise and thus avoid complaints being made to the Commissioner. The Commissioner considers that many, if not all, of the issues which have been dealt with in this notice could (and should) have been addressed by a thorough internal review.
32. The Commissioner would draw the Parish Council's attention to her published guidance on internal reviews.³ She understands that, due to the size of the Parish Council, it may be difficult for reviews to be handled by a more senior and uninvolved person, but she considers that it should not be beyond the resources of the Parish Council, or the ability of its members and staff, to devise and implement some sort of formal process by which dissatisfaction with information request responses can be addressed in the first instance.

³ https://ico.org.uk/media/for-organisations/documents/1613/internal_reviews_under_the_eir.pdf

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

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