

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

Decision notice

Date: 7 June 2018

Public Authority: Burnham on Crouch Town Council
Address: Council Offices
Chapel Road
Burnham-on-Crouch
Essex
CM10 8JA

Decision (including any steps ordered)

1. The complainant has requested information concerning the title to allotments and a purported transfer of land.
 2. Burnham on Crouch Town Council stated in the initial response and its review response that no information was held within the scope of the request. Following the Commissioner's intervention, the Council reviewed the matter and found minutes that were relevant to the request which it disclosed to the complainant. In failing to disclose at the time of the request information that it did hold, Burnham on Crouch Town Council breached regulation 5(2) of the EIR.
 3. As the information has now been disclosed the Commissioner does not require the Council to take any further steps to ensure compliance with the legislation.
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Request and response

4. On 30 August 2017 the complainant wrote to Burnham on Crouch Town Council ('the Council') and requested information in relation to allotments in the area in the following terms:

"I wish to make a formal Freedom of Information request for all written material held by the Council concerning the ownership of the allotments since 1992; the copy of any transfer of the land to a third party; lists of those consulted about the transfer and notes of the process of the consultation; minutes and notes of meetings between council members or officers and Moat Housing Group concerning the allotments since 2012; dates and times of any meetings between council members or officers and Moat Housing Group; details of Burnham on Crouch Council members since 1992 who have also been directors or employees of Moat Housing Group or any subsidiary."

5. The Council responded on 27 September 2017. It stated:

"I have been instructed by the Town Council to respond to your Freedom of Information request as follows: all written material held by the Council concerning the ownership of the allotments since 1992; the copy of any transfer of the land to a third party; lists of those consulted about the transfer and notes of the process of the consultation: The Town Council holds no such information other than the lease documents."

6. The complainant requested a review on 18 October 2017. He stated

"I note that your reply of 27 September indicates that 'the Town Council holds no such information [regarding the purported transfer of the land] other than the lease documents'. ... It has, to my certain knowledge, met twice to discuss concerns about ownership and I would imagine that there have been further discussions in addition. I cannot imagine that such Council discussion has taken place in the absence either of copies of the purported transfer to Moat Housing Group by Maldon District Council nor, indeed, without consideration of the terms of the original Mildmay lease. Accordingly, there are reasonable grounds to believe that the Council has copies of at least the purported transfer."

7. Following an internal review the Council wrote to the complainant on 20 October 2017. It maintained its original position and stated:

"I have conducted an internal review and find due process was followed in preparing the Town Council's reply to your Freedom of Information request. A reply was drafted and at a full Town Council Meeting

Members satisfied themselves that the reply was factually correct and as Town Clerk instructed me to send the reply to you."

Scope of the case

8. The complainant contacted the Commissioner on 20 October 2017 to complain about the way his request for information had been handled. The complainant maintained that the Council must hold information relevant to the request after a purported transfer of the land to a third party was discovered during the course of recent negotiations between the Council and the allotment association.
9. The Commissioner wrote to the Council on 27 March 2018 asking it to either reconsider its response to the complainant's information request or to provide further information by way of justification for its stated position.
10. During the course of the Commissioner's investigation the Council met with the complainant with the aim of resolving the complaint informally. An agreement was reached and recorded in a document known as the '*settlement statement*' by the Council.
11. The settlement statement records that: *"In the course of discussion between [complainant's name] and the Council it became evident that minutes existed of Council decisions relevant to this matter despite a denial, repeated on the review request."*
12. The settlement statement also records that further information had been redacted from the Council's minutes regarding the *"need for openness and transparency"*. The redaction included a statement that the Council had agreed to use to respond to any enquiries concerning the ownership of the allotment site. The settlement statement records that *"the Council regrets its redaction of this paragraph."*
13. The Council and the complainant have confirmed to the Commissioner that the Council has now provided copies of all the relevant minutes within scope of the request.
14. The settlement statement also records that the Council will:
 - *"Amend its policy on minutes and agendas."*
 - Ensure that FOI requests are dealt with *"as a legal matter and as per ICO recommendations"*.

15. The complainant has advised the Commissioner that he remains dissatisfied with the way his request was handled, and he has an outstanding matter of concern. He reports that during the meeting an officer at the Council advised that the minutes released to him *"related to a meeting held after the FOIA request"*. However when the minutes were disclosed the complainant noted that this was not the case.
16. The Commissioner is unable to verify or comment upon what was verbally advised to the complainant, especially in view of the fact that the information has subsequently been disclosed. Nonetheless, in light of her investigations, she considers the scope of this case to be whether the Council dealt with the request in line with the procedural requirements of the EIR.

Reasons for decision

Regulation 2(1) - Environmental Information

17. Regulation 2(1) of the EIR defines environmental information as 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...emissions...and other releases into the environment, likely to affect the elements 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;..."
18. Information about a plan or a measure or an activity that affects or is likely to affect the elements of the environment is environmental information. The information in this case relates to the purported transfer of ownership of an allotment site, which could clearly result in the setting aside of the land for a different use.
19. The Commissioner therefore finds that the information is environmental information and should be considered under the EIR.

Regulation 5(1) - the duty to make the environmental information held available on request.

20. Regulation 5(1) states that, subject to the application of various exceptions, a public authority that holds environmental information shall make it available on request.
21. The Commissioner finds that the Council was clearly in breach of Regulation 5(1) in their initial response and the review response.
22. The Commissioner notes that its position, regarding information held in scope of the request, only changed after she had commenced an investigation into the complaint.
23. However as the complainant has confirmed that he is satisfied with the information latterly provided by the Council, the Commissioner has not gone on to consider whether the Council holds any further information.

Regulation 5(2) - time for responding

24. Regulation 5(2) of the EIR states that information shall be made available "*as soon as possible and no later than 20 working days after the date of the receipt of the request.*"
25. The request was made on 30 August 2017, and the Council denied holding any information initially on 27 September 2017 and again on 20 October 2017 after the Council held an internal review. The information was released at some stage after the Commissioner's investigation letter of 27 March 2018, more than seven months after the initial request.
26. The Commissioner therefore finds that the Council has breached regulation 5(2) in taking longer than 20 working days to disclose the information to the complainant.

Other matters

27. Whilst the Commissioner cannot know the circumstances within the Council that lead it to deny that any information was held, the chronology of events is a matter of concern.
28. The Council has stated that it "*wishes to reassure the Information Commissioners office and [complainant name] that a review of policies and procedures has taken place. Improvement measures have already been implemented.*" It goes on to state that it will review its policies annually.

29. The Commissioner asks the Council to ensure that the review of procedures includes the FOIA and EIR training (both content and its monitoring of training take-up for all Council officers); its records management processes; and the Councils procedures for responding to requests. Regard should be given to the Codes of Practice issued under sections 45 and 46 of the Freedom of Information Act (2000) and the associated guidance that the Commissioner has made available.

Right of appeal

30. 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

31. 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.
32. 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
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Wycliffe House
Water Lane
Wilmslow
Cheshire
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