

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

**Decision notice**

**Date:** 21 July 2020

**Public Authority:** Worcestershire County Council  
**Address:** County Hall  
Spetchley Road  
Worcester  
WR5 2NP

**Decision (including any steps ordered)**

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1. The complainant has asked Worcestershire County Council ("the Council") for information relating to two development sites, including any pre-application advice given to the promoters of the sites by Worcestershire County Council and Wychavon District Council. While dealing with the request the Council provided the complainant with some relevant information. It also advised the complainant that it did not hold certain other information.
2. The Commissioner's decision is that Worcestershire County Council has complied with Regulation 5(1) of the EIR. She has also decided that the Council has contravened the requirements of Regulation 5(2) by failing to provide the complainant with information relevant to his request within the statutory twenty working days compliance period.
3. The Commissioner is satisfied that the Council provided the complainant with appropriate advice and assistance under Regulation 9 of the EIR. The Commissioner considers that the Council has not contravened Regulation 14(3) because it has not refused to provide the complainant with any information it holds which is relevant to his request.
4. No further action is required in this matter.

**Request and response**

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5. On 6 November 2019, the complainant wrote to the Council to ask for the following recorded information:
  - A list of meetings held with the promoters of sites CFS0844sc (land at Brewers Lane) and CFS0347 (land rear of 36 Bretforton Road).
  - Wychavon District Council (WDC) pre-application advice in respect of sites CFS0844sc and CFS0347.
  - Worcestershire County Council (WCC) pre-application advice in respect of sites CFS0844sc and CFS0347.
  - Technical highways studies prepared by the promoters of sites CFS0844sc and CFS0347.
  - WCC Highways Authority response in respect of sites CFS0844sc and CFS0347.
  - Badsey Parish Council responses in respect of sites CFS844sc and CFS0347.
  - Any further statutory responses in respect of sites CFS0844sc and CFS0347 (utilities / services / drainage / landscape).
6. The Council responded to the complainant's request on 25 November 2019, informing him of the searches it had carried out to locate the information relevant to his request. Having conducted these searches, the Council told the complainant that there are no records of any advice recorded by landscape officers.
7. The Council said that there had been no meetings between itself and the promoters of the two sites but added that the Highways Authority had provided pre-application advice which remains confidential.
8. The Council directed the complainant to Wychavon District Council (WDC) to ask for any pre-application advice which it might have provided and it advised the complainant that it holds no information relating to Badsey Parish Council's responses in respect of the two sites.
9. Finally, the Council told the complainant that the LLFA have no record of having provided advice in respect of the two sites.
10. On 27 November 2019, the complainant wrote to the Council to challenge the Council's position whereby it is withholding pre-application advice on the grounds that "it remains confidential".
11. On 18 December 2019, the Council wrote to the complainant to provide him with all the pre-application advice it holds which relates to the

Brewers Lane site. The Council said that it was disclosing this information because the applicant did not specifically request that the information was kept confidential. The Council told the complainant that although it had provided some pre-application advice on the Bretforton Lane allocation, it no longer holds that information on its system. The Council therefore directed the complainant to WDC, which it said, as the Planning Authority, may hold copies of the advice provided by WCC.

12. On 10 January 2020, the complainant wrote to the Council to acknowledge his receipt of the various items of correspondence the Council had sent him and to assert that the Council of had misled him by stating there had been no meetings between the Highways Authority and the promoters of the two sites.
13. On 24 January 2020, the Council wrote to the complainant to advise him that its response of 25 November was technically correct. There had been no meetings with the promoters of the two sites, but pre-application advice had been provided by way of an exchange of the emails which had been sent to the complainant. The Council again advised the complainant that it no longer holds the information regarding the Bretforton Lane site and that WDC had confirmed to the Council that it would provide the information if they hold it.

### **Scope of the case**

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14. The complainant contacted the Commissioner on 3 February 2020 to complain about the way his request for information had been handled.
15. The complainant asserts that, assuming the Council has correctly identified the information it holds and does not hold, and assuming that it has provided all of the information it holds, the outstanding matters for the Commissioner to investigate are:
  - A list of meetings the Council had with the promoters of the two sites, where the complainant asserts that the Council has given no reason for non-disclosure.
  - Pre-application advice given by WDC, where the complainant asserts that the Council has given no reason for the non-disclosure of that information.
  - The highways studies provided to the Council by the promoters of the allocated sites, where the Council has given no reason for not disclosing that information.
16. Having considered the complainant's representations, the Commissioner advised him that her investigation would determine whether Worcestershire County Council has handled his request in accordance

with the EIR, and specifically, whether the Council has disclosed all of the recorded information it holds which is relevant to his request.

17. Additionally, the Commissioner advised the complainant that she would address the asserted failure of the Council to properly refuse part of his request in accordance with the requirements of Regulation 14 of the EIR.

## **Reasons for decision**

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### **Regulation 5(1) – duty to make environmental information available on request**

18. Regulation 5(1) of the EIR requires a public authority that holds environmental information to make it available on request.
19. The Commissioner has sought to determine whether the Council holds information relevant to the matters which the complainant considers remain outstanding, which he has asked the Commissioner to investigate.
20. To make this determination the Commissioner must consider the facts of the case, as she understands them, against the balance of probabilities. This is the civil test and it accords with the approach taken by the First Tier Tribunal (Information Rights) when it has considered whether information is held in past cases.
21. The Commissioner asked the Council to respond to the complainant's assertion that the Council has not disclosed to him a list of meetings the Council had with the promoters of the two sites and to his assertion that the Council gave him no reason for its non-disclosure.
22. In response to her enquiry, the Council has assured the Commissioner that it has not had any meetings with the promoters of the sites. It says, "We therefore do not hold this information to disclose to the requester"
23. Referring to its response to the complainant of 25 November 2019, the Council says that it informs the complainant that "The Highway authority have held no meetings with the promoters of sites CFS0844sc and CFS0347". The Council accepts that it could have been clearer in stating that it does not hold this information but added that this was subsequently clarified in the Council's email to the complainant of 24 January 2020.

24. In respect of any Pre-application advice given to the promoters of the sites by Wychavon District Council, the Council has informed the Commissioner of the following:

"There is no requirement for Wychavon District Council to provide Worcestershire County Council with any copies of the pre-application advice they may give to a prospective developer. Wychavon District Council is also the relevant planning authority for the two sites, not WCC. It is therefore reasonable to assume that WCC would not usually hold copies of any pre-application advice that Wychavon District Council may or may not have provided. Our searches for information have not identified that we have been provided with a copy of this information. Any pre-planning advice that Wychavon District Council may have given in respect of these sites would be held by them and would not be held by WCC. We advised [the complainant] of this in our response of 25 November 2019 "You will need to contact Wychavon District Council (WDC) for any pre application advice they may have entered into."

25. The Council addressed the remaining element of this complaint, i.e. in respect of the highway's studies provided to the Council by the promoters of the allocated sites, in the following response made to the Commissioner:

"This specific point was missed in error in our original handling of [the complainant's] request and was also missed in our subsequent correspondence as this was focussed on the pre-application advice as his letter dated 27 November challenged our position that the pre-application advice was confidential. We apologise that this part of his request was not dealt with."

26. The Council has not repeated its searches for this information and has confirmed to the Commissioner that the promoters have not provided the Council with any highway's studies. This means that the Council should have informed the complainant that it does not hold this information.
27. The Council has assured the Commissioner that it has not withheld any of the information requested by the complainant and that all the information it holds in regard to his request has already been provided in the Council's correspondence of 25 November 2019, 18 December 2019 and 24 January 2020.
28. On the basis that the Council has not withheld any information relevant to the complainant's request, the Council has made clear to the Commissioner that it is not relying on any of the EIR's exceptions to disclosure. It has also made clear that, in respect of the pre-application advice provided by other organisations – in this case Wychavon District

Council, the Council holds the view that the complainant should contact those organisations to obtain the information he requires.

29. To emphasize its position, the Council has responded to the Commissioner's questions which concern the searches it has carried out for information falling within the scope of the complainant's request. The Council has advised the Commissioner that its searches were conducted by the teams who provide pre-planning advice and they were asked to search their records to identify any relevant information.
30. The teams who searched their records were the County Planning Authority; Archives and Archaeology Service (landscapes); Highway Authority; and the Lead Local Flood Authority (LLFA). These teams searched for relevant information in their network drives (U drives) where they each store their case records. The team responses were included in the letter provided to the complainant.
31. The teams listed above were asked to search all their records to identify relevant information. These records included individual email accounts.
32. The Council says it is not its policy to store information on individual machines, and teams have network folders set up to store business related information. The Council acknowledges that it might hold some paper-based records but says that this would be limited as most teams are not now creating new paper files and, in this case, relevant records would be held electronically.
33. The Council has advised the Commissioner that it used the following terms to search for information relevant to the complainant's request: 'name of the road', 'site details', 'planning references' and 'site location'.
34. Notwithstanding the searches made in respect of the complainant's request, the Council has told the Commissioner that it believes a pre-application advice request might have been received several years ago. Since that time, the officer who would have handled the pre-application enquiry has left the organisation and consequently the Council is unable to confirm whether or not such a request had been made, what response was made, or where any such response may have been saved.
35. The Council acknowledges the possibility that the request made several years earlier was responded to by email as this was common practice at that time. The Council has advised the Commissioner that such an email was not saved into the central network folder which was confirmed by the searches of the networked drives.
36. The Council considers that its email to the complainant of 24 January provided appropriate assistance to the complainant to the extent that it

directed him to Wychavon District Council to ask for advice which might have previously been provided.

37. On the basis that the Council is unable to confirm whether it provided preapplication advice in the past, it is also unable to say if or when that advice was deleted. This is because, if the Council did provide the advice, which it believes it might have, it was not filed into the correct location.
38. The Council's position is made difficult by the fact that the officer who handled the pre-application enquiry has left the Council and confirmation cannot be given whether such a request had been made. The Council is only able to rely on the searches it has made in respect of the complainant's request and these searches of the networked drives have found no record of any advice previously given.
39. Irrespective of whether the Council holds the information which the complainant has asked for, the Council has advised the Commissioner that its Disposal Schedule states that pre-planning advice should be retained for a minimum of 12 years. This enables the Council to refer to any advice it has previously provided should a planning application be subsequently submitted, although there are no statutory requirements for the Council to retain the requested information.
40. The Council has also confirmed to the Commissioner that it holds no information for the two sites that is similar to the information requested by the complainant. This is because information of this type is specific to the respective sites and therefore it is unlikely that pre-application advice for another site would be relevant. For this reason, the complainant was advised to contact Wychavon District Council who, as the relevant planning authority, may have been copied into any pre-application advice Worcestershire County Council might have provided.

#### *The Commissioner's decision*

41. The Commissioner has considered the Council's representations in respect of this complaint. The Commissioner finds those representations to be credible and both in the absence of any evidence to the contrary and on the balance of probability, the Commissioner accepts that the Council does not hold the information which the complainant has asked for.
42. The Commissioner's decision is that the Council has complied by Regulation 5(1) of the EIR in respect of the complainant's request.
43. The Council accepts that it has contravened the requirements of Regulation 5(2) in respect of the complainant's request. It notes that, whilst it responded to the complainant on 25 November 2019, 13

working days following its receipt of the request, informing the complainant that it did not hold all of the information he had asked for, the Council failed to disclose the information it did hold and it failed to fully consider the information it holds under the EIR.

44. Following the complainant's correspondence of 27 November 2019, the Council reconsidered its position and the information it holds was provided to him on 18 December 2019. This exceeded the twenty working day compliance period by 9 days and therefore the Commissioner must find that the Council contravened Regulation 5(2) of the EIR.
45. The Council accepts that the errors made in its responses failed to refer to a relevant exception. It has assured the Commissioner that its staff are being reminded of the proper processes in place for handling FOI and EIR requests to ensure that responses of the sort received by the complainant are not sent out in the future.
46. Regulation 14(3) of the EIR requires a public authority to specify the reasons why it is refusing to disclose information that is the subject of a request. In this case, the Council asserts that it has not refused the complainant's request, although it accepts that its initial response withheld some relevant information which was subsequently provided.



## Right of appeal

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47. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

48. 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.
49. 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**