

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

**Decision notice**

**Date:** 14 October 2020

**Public Authority:** Shropshire Council  
**Address:** Shirehall  
Abbey Foregate  
Shrewsbury  
SY2 6ND

**Decision (including any steps ordered)**

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1. The complainant has requested information about a planning application from Shropshire Council (the "Council"). The Council provided the requested information, other than a small amount of personal information which was withheld under section 12(3) (personal data) of the EIR. The complainant did not contest the withholding of personal information. However, he did not consider that the Council had disclosed all the information it held.
2. The Commissioner's decision is that, on the civil standard of the balance of probabilities, no further information is held. No steps are required.

**Request and response**

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3. On 2 October 2019, the complainant wrote to the Council and requested information in the following terms:

*"I would like to submit a formal information request under the Freedom of Information Act for all and any recorded information held by the Authority in connection with, or making mention of, planning application 19/03393/FUL (all iterations). I would like this to include information held on computers and servers, in sent, received and deleted emails, and in printed or handwritten documents as well as images, video and audio Recordings".*

4. On 29 October 2019, the Council responded. It advised that most of the information was available on its planning portal. It cited section 12(3) of the EIR to withhold the remainder, which the Commissioner understands consisted of two emails which were not on its planning portal.
5. On 14 November 2019, the complainant requested an internal review, saying that he did not consider that all the requested information had been provided.
6. Following an internal review, the Council responded on 28 November 2019. It disclosed the two emails which had initially been withheld, redacting personal information from within them. Its position after this was that no further information was held.

### Scope of the case

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7. The complainant contacted the Commissioner on 10 March 2020 to complain about the way his request for information had been handled. He advised as follows:

*"I would expect there to be more documents, records and notes referring to the planning application in question. Given I was not provided with any information, and then information that is lacking despite my knowing of its existence, seems to point to a failing in following correct procedure when dealing with an FOI. I would like a thorough review of the steps taken, and then of the information held, with all and any relevant information provided to me".*

8. The complainant only raised issues regarding his view that not all the information held had been disclosed; as he did not raise any issues regarding the withholding of personal information this has not been further considered. The Commissioner will consider whether any further information is held below.

### Reasons for decision

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#### Regulation 2 – Is the requested information environmental?

9. Environmental information must be considered for disclosure under the terms of the EIR rather than the FOIA. Regulation 2(1)(c) of the EIR defines environmental information as any information on:

*"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 [2(1)](a) and (b) as well as measures or activities designed to protect those elements."*

10. The request in this case is for information relating to planning matters. The Commissioner is satisfied that the requested information is on a measure that would, or would be likely to, affect the elements listed in regulation 2(1)(a) and is, therefore, environmental under regulation 2(1)(c).

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

11. Regulation 5(1) of the EIR states that "*a public authority that holds environmental information shall make it available on request.*" This is subject to any exceptions that may apply.
12. 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 was 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 the requested information was not held.
13. For clarity, the Commissioner is not expected to prove categorically whether the information was held, she is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities. This is in line with the Tribunal's decision in *Bromley v the Information Commissioner and the Environment Agency (EA/2006/0072)* in which it stated that: "*there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records*". It clarified that the test to be applied as to whether or not information is held was not certainty but the balance of probabilities.
14. It is also important to note that the Commissioner's remit is not to determine whether information should be held, but only whether, on the balance of probabilities, the requested information was held by the Council on the date the request was received.

#### *The complainant's view*

15. The complainant advised the Commissioner that, subsequent to this request, he had also approached Shrewsbury Town Council for copies of any information it held about the planning application. Shrewsbury Town Council had provided him with email exchanges and other documentation which indicated it had been in contact with the Council

on the matter, however, that information had not been disclosed to him by the Council in response to his request to it. He therefore considered that the Council should have been able to locate further information and provide this to him and, as such, he was not confident that the Council had located and disclosed all the information caught within the scope of his request. He provided the Commissioner with evidence to support his position.

16. The complainant agreed that this position could be shared with the Council by way of evidence for his concerns. The Commissioner did so on his behalf.

*The Council's view*

17. The Council was confident it had undertaken sufficient searches and that no further information within the scope of the request was held. In responding to the Commissioner's investigation enquiries it explained as follows.
18. When asked what searches it had undertaken to try and locate information, it advised: *"Information was collected from the main document management system used for all planning applications, and from any individual emails held by officers involved with the application"*. It confirmed that its searches had included personal computers used by key officials (including laptop computers) as well as networked resources and emails.
19. In terms of the search terms used, the Council advised that all records held on its document management system would be recorded with the relevant planning application reference number and that email correspondence would be held by either the reference number or the address of the development proposal. It added that any information, if it were held, would be held electronically. Therefore, its electronic searches had been undertaken using the planning application case record, the planning application reference number and the address of the development proposal.
20. When asked whether it had ever held any recorded information relevant to the scope of the complainant's request which had since been deleted it explained:

*"Emails that are not required for inclusion in the Planning Register, or have already been actioned or addressed, i.e., covered in the officers report which is publicly available to view will not be retained due to the high volumes of correspondence received by the Council"*.

It added that it was not able to confirm any dates of such deletions, were information ever held.

21. When asked about its formal records management policy and what this says about the retention and deletion of records of this type, it advised:

*"Documents that are required for the statutory purpose of the Planning process are retained on the main application case files. Due to the high volumes of email correspondence we are unable to retain this type of correspondence which has already been actioned or addressed and it is not therefore retained as part of the main case file ... The retention policy for Parts 1 and Part 2 of the Planning Register is subject to review in line with current legislation. We are currently awaiting the outcome of the Government's consultation of the reform of the planning system in England (published 6.08.20) in order to implement further changes that may be required as a result of any changes in legislation".*

22. The Council also confirmed that it did not consider that copies would have been made of any information that may have been deleted and advised that there was no business purpose, or statutory requirement, for retaining such information.

*The Commissioner's view*

23. The Commissioner has examined the submissions of both parties. She has considered the searches performed by the Council, the information disclosed, the Council's explanations as to why information was not held and the complainant's concerns.
24. The Commissioner is satisfied that the Council carried out adequate and appropriately-targeted searches to locate relevant information within the scope of the request. She notes that all of the relevant officers were consulted and a variety of suitable electronic search terms were used. The Commissioner considers that such searches would have located all relevant information.
25. 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 relevant information to that which it had already identified and disclosed to the complainant. Whilst the complainant has been able to evidence that there had been additional correspondence, the Council's explanation that this would have since been deleted as it had been dealt with and was therefore no longer required, is a reasonable one.
26. The Commissioner is satisfied that, at the time of the request and on the balance of probabilities, the Council did not hold any further information falling within the scope of the request to that which has been disclosed.

The Commissioner considers that the Council has complied with the requirements of regulation 5(1) of the EIR.

## Other matters

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27. Although they do not form part of this notice the Commissioner wishes to highlight the following matter.
28. In supplying his evidence to the Commissioner, the complainant included correspondence between himself and the Council that post-dated his original request of 2 October 2019 and which included a copy of a "*Draft Agenda for Northern Committee 15/10/2019*" containing information he considered to be within the scope of his request. Whilst it did not exist at the time his request was received, it did exist prior to the Council's initial refusal notice of 29 October 2019 so he believed it should have been disclosed previously and also that it should be on the planning portal (which, he said, it wasn't).
29. However, the Commissioner has not included any determination about this document, ie whether or not the Council breached the EIR in not disclosing it. This is because the complainant did not refer the matter to her until 6 October 2020, ie considerably outside of the 10 working day time limit which he was given, on 19 August 2020, for submitting any additional grounds of complaint to her. Furthermore, she does note that he is not disadvantaged as he now has it in his possession

## Right of appeal

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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@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)

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** .....

**Carolyn Howes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**