

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 11 May 2020

**Public Authority:** Hastings Borough Council

**Address:** Queens Square  
Hastings  
TN34 1TL

#### **Decision (including any steps ordered)**

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1. The complainant requested copies of correspondence sent between a named officer at Hastings Borough Council (the council) and a geotechnical engineering company within a specified time period.
2. Whilst the council provided the complainant with copies of some emails, it redacted certain information which it regarded to fall outside the scope of the request.
3. During the Commissioner's investigation, the council confirmed that it had, in error, failed to release a copy of an email dated 23 January 2015 in response to the request.
4. The Commissioner has decided that part of the information redacted by the council falls within the scope of the request and should have been supplied to the complainant. She also regards there to be a small amount of additional information that is relevant to the request which the council failed to consider for disclosure. It is the Commissioner's decision that this information should also be released to the complainant.
5. Whilst the council did provide some information to the complainant in response to his request, as it failed to do so within the prescribed 20 working days, the Commissioner has found that it has breached regulation 5(2) of the EIR. Furthermore, as the council has failed to communicate all the information to which the complainant was entitled, the Commissioner concludes that there has been a breach of regulation 5(1) of the EIR.

6. The Commissioner requires the council to take the following steps to ensure compliance with the legislation:
  - If it has not already done so, the council should release a copy of the email correspondence sent between Coffey and the named officer dated 23 January 2015 (which the council advised it omitted from its response to the complainant in error). It should also provide the name of the report which was attached to this email.
  - Release all the information contained within the bundle of information provided for the Commissioner's consideration where the source of the correspondence was either Coffey or the named officer, and where one of these two parties were also included within the 'cc' field of the email.
  - Release a copy of the email correspondence sent between Coffey and the council (including the named officer in the 'cc' field) dated 16 June 2015.
  - Release a copy of the email correspondence sent between Coffey and the council (including the named officer in the 'cc' field) dated 23 June 2015. It should also confirm the name of the report which was attached to this email.
7. The council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## **Request and response**

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8. The complainant originally wrote to the council on 18 July 2017 and requested information in the following terms:

*Please provide me with copies of all correspondence between Coffey and [officer name redacted- 'Officer A'] from 01/01/2013 to date.*

*Correspondence should include all emails, documents and letters concerning Rocklands and/or Ecclesbourne Glen.*

*Correspondence should include everything received from Coffey and everything sent to Coffey by [Officer A].*

9. On 16 October 2018, the council provided its response. It advised that the request was to be refused under regulation 12(4)(b) of the EIR. The

council advised the complainant that it regarded the cost and burden of dealing with the request to be too great and it was deemed to be manifestly unreasonable.

10. The council explained that 5 years of correspondence would amount to approximately *'1000 A4 sheets which is very time consuming and resource heavy'*. It stated that it had been estimated that to check each sheet manually would take 15 minutes and would amount in total to 250 hours. The council advised that it was not resourced to undertake an exercise of this size due to time and cost and, when giving consideration to the public interest test in this context, it regarded there to be a *'limited interest'* in terms of the wider value of the information being released into the public domain. The council went on to say that it had therefore decided that the public interest in maintaining the exception outweighed the public interest in disclosure.

11. The council concluded its response by informing the complainant of the following:

*'You may wish to specify what information you actually are trying to obtain to make the request more manageable to comply with and therefore not manifestly unreasonable.'*

12. The complainant contacted the council on 16 October 2018 to express his dissatisfaction about how it had handled his request. He also provided what he described as *'proposed refinements'* to his original request. His correspondence, which the Commissioner regards to be a new request for information, was set out as follows:

*'I am especially interested in correspondence between Coffey and [Officer A] for the years 2014 and 2015. Emails and letters will suffice.*

*Please refine my request to be for all emails and letters between [Officer A] and Coffey for the years 2014 and 2015 concerning Rocklands and Ecclesbourne Glen. I cannot believe that will be an unbearable burden.*

*Please do not include the contents of any documents included in this correspondence but please do list the names of any documents included.'*

13. The council responded to the complainant's new request on 20 December 2018. It provided copies of some correspondence sent between Officer A and Coffey within the period 2014-2015. The council advised that parts of this correspondence had been redacted as it did not relate to Rocklands (the site), or to Ecclesbourne Glen (the Glen) and was therefore not relevant to his request. The council also confirmed that certain emails that had formed part of an email chain were redacted in their entirety as they had not been sent between

Officer A and Coffey, and therefore also did not fall within the terms of the request. The council also confirmed that names/addresses/telephone number and email addresses had been redacted under section 40(2) of the FOIA.

14. On 21 December 2018, the complainant requested an internal review. He was concerned that he had received very little information, and that many of the emails which had been provided had been replicated several times. The complainant suggested that this outcome did not appear to correlate with the council's response to his first 'unrefined' request.
15. The complainant went on to express concern about the information which had been redacted. He stated that he was aware that other information existed that was relevant to his request which should have been supplied to him. In addition, as dates and times were not included within all the correspondence, it was difficult to place them in chronological order.
16. The council provided its internal review response to the complainant on 15 January 2019. It confirmed that it was satisfied that it had supplied all the information which was held that was relevant to the time period set out in his request. The council reiterated the explanations set out in its original response about why certain information was redacted. It also advised that it had not been necessary to have considered any exception, or the public interest test, because the only information that had been redacted was that which had fallen outside the scope of his request.
17. With regards to information that the complainant had stated existed, but which had not been released in response to his request, the council confirmed that if he provided further details, it would investigate this.
18. The council also confirmed that the dates of the emails were correct and were provided as they were held. It also maintained its original decision that the complainant's first request was manifestly unreasonable.

### **Scope of the case**

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19. The complainant contacted the Commissioner on 24 May 2019 to complain about the way both his requests for information had been handled.
20. The Commissioner would firstly confirm that she has already notified the complainant that she does not intend to consider how the council handled his original request of 18 July 2017. Details of this request are

therefore only included within this decision notice for the purpose of providing background and context to the request of 16 October 2018.

21. The Commissioner also notes that the complainant has not raised any objections to the council's decision to redact the names and contact details of individuals on the basis that it was personal data. The Commissioner does not have any specific concerns about the council's decision to redact this information and has therefore excluded it from her investigation.
22. The complainant has also raised concerns that some of the copies of emails he has received do not contain dates and he has found it difficult to order the information chronologically as a result.
23. The Commissioner has only been able to identify one instance where a date of a communication was not clear. This was in relation to an email sent by Officer A to Coffey on 2 April 2014. Whilst the date of this email can be identified, the date of an internal email which had been embedded within the main content of their communication cannot be seen in full. The Commissioner has no reason to believe that this is not the exact format in which the original document is held, or that the date is any clearer on the original version. In any event, the date of the actual correspondence sent between Officer A and Coffey that contains this information is clearly set out.
24. The Commissioner has also considered the complainant's concerns that some emails were repeated within the bundle provide to him and that this has resulted in confusion about the order of the information. However, as far as the Commissioner can see, these emails appear to have been duplicated as they were included in various sets of email chains that were identified as being relevant to the request. She therefore does not regard it to have been unreasonable for the council to have provided copies of each set of emails in the format that they were held.
25. Given the above, the Commissioner does not have any particular concerns about the way in which the information has been supplied to the complainant in this instance.
26. Having considered matters in full, the Commissioner considers the scope of her investigation to be as follows:
  - Whether the council was correct to advise that the information (aside from the personal data element) which has been redacted from the bundle supplied to the complainant is not relevant to his request,

- Whether, on the balance of probabilities, there is any other information held by the council that is relevant to the request.
- If any additional information is identified as being relevant to the request, whether the council is entitled to withhold this information.
- The council's compliance with procedural aspects of the EIR, as requested by the complainant.

## **Reasons for decision**

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### **Is the requested information environmental information?**

27. Information is 'environmental information', and must be considered for disclosure under the terms of the EIR, rather than the Freedom of Information Act 2000 (FOIA), if it meets the definition set out in regulations 2(1)(a) to 2(1)(f) of the EIR:
28. Regulation 2(1)(c) of the EIR says that any information on measures such as policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect the elements or factors listed in regulation 2(1)(a) and 2(1)(b) will be environmental information. One of the elements listed under 2(1)(a) is land.
29. The correspondence requested is between a council officer and a geotechnical engineering company, Coffey, about the site and the Glen. The information which is captured by the request all relates in some way to the land, and its management, in those areas specified by the complainant.
30. The Commissioner is satisfied that the information that has been withheld can be considered to have an affect on the land and its use, and that it fits squarely into the definition of environmental information set out within regulation 12(1) of the EIR.

### **Regulation 5– duty to make information available on request**

31. Regulation 5(1) of the EIR states that a public authority that holds environmental information will make it available upon request. This obligation is subject to a number of exceptions contained in regulation 12.
32. Regulation 5(2) provides that a public authority should provide the information to which the applicant is entitled to within 20 working days of the request being received.

33. The council states that it identified all the information that it believed to be captured by the request and has supplied this to the complainant. However, it has confirmed to the Commissioner that, as a result of a scanning error, it withheld one email dated 23 January 2015 that it had intended to release to the complainant.
34. The Commissioner is satisfied that the council should have released the email dated 23 January 2015 to the complainant. In addition, there was also a report attached to this email. The complainant stipulates in his request that he does not require copies of any documents which are included as part of the correspondence sent between Coffey and Officer A. However, he does ask for confirmation of the names of any such documents. Therefore, whilst the Commissioner does not consider the report itself to fall within the scope of the request, she is satisfied that the council should release the name of the report to the complainant.
35. With regard to the redactions made by the council, the Commissioner accepts that some of this information is either on a separate subject matter to that referred to by the complainant, or is not correspondence sent 'between' Coffey and Officer A. The council was therefore correct to withhold this information in response to the complainant's request.
36. However, the Commissioner finds that the council was not correct to redact the content of those emails where the sender was either Coffey or Officer A, and the other party was named as a recipient in the 'cc' field (rather than the 'to' field) of the email. The Commissioner regards such emails to meet the definition of communications sent between the two parties; they are therefore considered to fall within the scope of the request.
37. In the complainant's representations, he has raised concerns that the council did not consider some information which he had believed would be relevant to his request. The Commissioner is mindful that the complainant may have made some inaccurate assumptions about what information was sent directly between Coffey and Officer A. Given this, some of the information which he believed should have been considered for release by the council may not actually fall within the terms of his request.
38. In saying this, during the Commissioner's investigation into a number of other complaints about the council's handling of information requests about the site and the Glen, she has been provided with access to some additional information that she has considered in this case.
39. The Commissioner has identified two further emails within this extra set of information which, whilst limited in content, is relevant to the complainant's request. These are dated 16 June 2015 (11:51 am) and



23 June 2015; they were sent by Coffey and Officer A was included as a recipient within the 'cc' field.

40. As the Commissioner did not consider these two emails to be relevant to any of the previous complaints that she has investigated, she has assumed that this information is not yet in the public domain. She has therefore decided that, as both emails are relevant to the current request under consideration, they should now be released to the complainant.
41. The email of 23 June 2015 also included an attached report. As the complainant does not require copies of any '*documents*', the Commissioner has not considered the content of this report in this case. However, she is satisfied that the council should release the name of this report to the complainant.
42. The Commissioner has decided that it is likely that, on the balance of probabilities, all the information that is held by the council that is relevant to the complainant's request has now been considered for release.
43. However, whilst it is the case that the council has provided the complainant with the vast majority of that information held which falls within the scope of his request, as it failed to do within 20 working days of his request being received, the Commissioner has found that it has breached regulation 5(2) of the EIR. To the extent that the council has not yet provided all the information to which the complainant is entitled, the Commissioner finds that it has also breached regulation 5(1) of the EIR.



## Right of appeal

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44. 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)

45. 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.
46. 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**