

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

Date: 15 September 2022

Public Authority: Dorset Council
Address: Great George Street
Weymouth
Dorset
DT4 8NN

Decision (including any steps ordered)

1. The complainant has requested information from Dorset Council (“the Council”) in relation to communications concerning a named highway. The Council provided them with some information, however it stated that it did not hold any further information within the scope of the remaining requested information.
2. The Commissioner’s decision is that the Council has not produced sufficient evidence for him to conclude that, on the balance of probabilities, it does not hold any further information within the scope of the relevant part of the request, therefore, regulation 12(4)(a) is not engaged.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation:
 - Issue a fresh response to the request as per paragraph 27 of this decision notice stating whether it holds any information within the scope of point 1 of the request and, if it does, either disclose that information or issue a refusal notice that complies with regulation 14 of the EIR.
4. The public authority 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 19 May 2021, the complainant wrote to the Council and requested information in the following terms:

“I request full disclosure under the Freedom of Information Act 2000 of any and every piece of correspondence, emails, internal documentation, meeting minutes/notes that [named Council officer] has been involved with since coming into that position concerning the highway known as Stapehill Road, Ferndown. Please provide the information in electronic format. If you have any queries or questions, please contact me and I will be very happy to clarify what I am asking for and discuss the request. Thank you for your time and I look forward to your response”.
6. The Council responded on 2 September 2021 providing some information in response to the complainant’s request. It stated that some of the information had been redacted to protect personal details.
7. The complainant on 8 September 2021 requested an internal review of the Council’s handling of his request in which he stated that he would like to see the following:
 1. Correspondence showing the involvement of [named Council officer] in discussions with the PCC and Dorset Strategic Roads Partnership with regards to Stapehill Road
 2. Correspondence re the questions raised by [name and details redacted] asked at Cabinet on 27 July 2021, which have still to be answered by Councillor Bryan.
8. On 7 October 2021 the Council responded to point 1 above with the following:

“I confirm that [named Council officer] has carried out appropriate searches and is unable to recollect or find correspondence of this description.”
9. The Council provided a further response on 15 October 2021 in which it disclosed information in relation to point 2 above, which it had treated as an additional request for information. It stated that some of the information had been redacted, again due to personal details being included.

Scope of the case

10. The complainant first contacted the Commissioner on 17 August 2021 to complain about the way their request for information had been handled.
11. Following correspondence from the Commissioner the Council provided the complainant with the information as outlined above.
12. The complainant considers that the Council should hold information within the scope of point 1 of the internal review request.
13. The scope of this decision notice will be the Commissioner's consideration of whether, on the balance of probabilities, the Council holds information within the scope of point 1 above.
14. As the Commissioner considers the requested information to be environmental, he has indicated this to the Council and asked them to consider it under the Environmental Information Regulations 2004 (EIR).

Reasons for decision

Regulation 5(1) and regulation 12(4)(a) of the EIR

15. Regulation 5(1) of the EIR states that a public authority which holds environmental information shall make it available on request.
16. Regulation 12(4)(a) of the EIR states that a public authority may refuse to disclose information "to the extent that it does not hold that information when an applicant's request is received".
17. In cases where there is a dispute over whether information is held, the Commissioner applies the civil test of the balance of probabilities in making his determination. This test is in line with the approach taken by the First Tier Tribunal when it has considered whether information is held, in cases which it has considered in the past.
18. The Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the public authority to check whether information within the scope of the request is held, and any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is held.

The complainant's view

19. The complainant considers that the Council should hold information within the scope of point 1 of their request for internal review, as they state that they have been informed that the particular named Council officer has been involved in numerous communications regarding the named highway.

The Council's position

20. The Commissioner wrote to the Council on 22 June 2022 and asked for its submissions regarding the reasons for stating that it does not hold information within the scope of point 1 above ("the requested information").
21. In its response to the Commissioner of 12 August 2022, the Council placed great emphasis on the fact that the named Council officer did not recall ever participating in such communications.
22. The Council confirmed that such information, if held, would be held in electronic format, however it could not confirm whether wider searches of its systems had been carried out other than the search personally carried out by the officer in question.
23. The Council informed the Commissioner that it does not believe such information was ever held by the Council, however it did not provide the Commissioner with a detailed account of the searches it had carried out in order to ascertain this as far as possible.
24. The Council stated to the Commissioner that, if such information were held, it may have been downloaded and saved in other corporate information systems, such as SharePoint, or a specific line of business applications used by the service area.
25. The Council further stated the following:

"Unfortunately, when the request was internally reviewed significant weight was put on [named officer's] recollection that they had not corresponded with either organisation about Stapehill Road. This meant we did not make or record detailed enquiries about what information systems had been searched, although I think it likely that all information we did disclose was extracted directly from the Council's corporate email system."

26. The Commissioner feels unable to conclude, from the information provided by the Council, that the requested information, on a balance of probabilities, is not held by the Council. Whilst he accepts that the Council considers it very unlikely that the information is held, without the Council's confirmation that it has carried out detailed searches of all relevant systems, he cannot reach a satisfactory conclusion as to whether on the balance of probabilities the information is held.
27. The Commissioner's decision is that the Council should revisit the request for information. The Council should conduct thorough and appropriate searches to determine if it holds information within the scope of point 1, and it should provide a fresh response or refusal notice which is compliant with the legislation.

Right of appeal

28. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

29. 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.
30. 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

Deirdre Collins
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF