

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: **9 November 2022**

Public Authority: **Dorset Council**

Address: **County Hall
Colliton Park
Dorchester
Dorset
DT1 1XJ**

Decision (including any steps ordered)

1. The complainant requested from Dorset Council (“the council”) information relating to communications and records concerning Powerfuel Portland. The council disclosed some information, however the complainant argues that further information should be held by it.
2. The Commissioner’s decision is that the council has not carried out searches on a wide enough basis in order to determine, on a balance of probabilities, whether any additional information is held for the purposes of Regulation 5(1).
3. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
 - To carry out further searches of its networked and file systems for relevant information, and to respond to the complainant’s request as required by the EIR.
4. 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 23 March 2021, the complainant made the following request for information under the FOIA:

"Please could you share call correspondence, agendas, and meeting materials exchanged between the following DC departments and Powerfuel Portland and their associates including Pure Leapfrog from 01 Jan to date.

*Planning
Dorset Waste Services
Low Carbon Dorset"*

6. The council responded on 16 April 2021 and provided what it claimed to be all the information held that was relevant to the request.
7. The complainant requested that the council carry out a review of its decision. He considered that further information should be held.
8. The council provided the outcome of its internal review on 7 June 2021. It maintained its position that no further information is held falling within the scope of the complainant's request.

Scope of the case

9. The complainant contacted the Commissioner on 19 October 2021 to complain about the way his request for information had been handled. He argues that further information should be held by the council. He also raised other issues which are not considered within this decision notice as they relate to matters outside of section 50 of FOIA.
10. The scope of this case, and of the following analysis, is whether the council is likely, on the balance of probabilities, to hold further information falling within the scope of the request for the purposes of Regulation 5(1) of the EIR.

Reasons for decision

Regulation 12(4)(a)

11. Broadly, Regulation 5(1) provides that, subject to an exception applying, a public authority that holds environmental information shall make it available on request.
12. Regulation 12(4)(a) 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.
13. The council argues that it does not hold any further information falling within the scope of the complainant's request for information. It has therefore applied Regulation 12(4)(a).
14. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
15. In other words, in order to determine such complaints, the ICO must decide whether on the balance of probabilities a public authority holds any - or additional - information which falls within the scope of the request which was held at the time of the request.

The complainant's position

16. The complainant argues that the council should hold further information falling within the scope of the request.

The council's position

17. The council argues that it has carried out adequate and appropriate searches in order to identify the information that is held which falls within the scope of the complainant's request. It says that it has not located any relevant information in addition to that which has already been provided.
18. The council clarified that at the time of the request, Powerfuel had submitted a planning application which the council has a statutory function to determine. As part of this function, services within the council would have been required to liaise with the planning applicant and their representatives.

19. The council has said that the information would be held electronically. It described how it identified officers who may hold information relevant to the request, and the searches which those officers had carried out; this included searches of the relevant outlook accounts. It has advised that no further relevant information was located.
20. The council said that it did not consider that searches of its electronic file system, 'Master Gov', or its shared network drive were necessary. This is because the terms of the request were for information 'exchanged between' the relevant parties and the council did not consider that there would be information held in its file systems which would fall within the terms of the request; i.e., information that had been exchanged between the council and Powerfuel Portland. The council has argued that any exchange would have been via electronic means (email). In addition, it states that the officer carrying out the searches did not believe that relevant information would have been exported to any of these locations prior to the completion of the search. The Commissioner, however, considers that this is an unreliable assumption to make in this case. Whilst individual emails may have been deleted once their usefulness had been fulfilled, the originals of such documents, such as agendas and meeting materials, could still be retained on the council's servers. Information may not have been emailed to Powerfuel, but may have been physically exchanged during the course of meetings between the two parties.
21. The Commissioner therefore considers that the council should have carried out a search of its networked and file systems using appropriate key words in order determine whether any relevant information is held. It should have taken account of whether any meetings took place between the parties during or just before or after the relevant time period, and established whether any correspondence or materials are held which relate to those meetings.
22. The Commissioner notes that the council considered that no relevant information would have been deleted as, at the time of the request, any information falling within scope of the request would have been less than 4 month's old.
23. The council clarified that it did locate indirect interactions with Pure Leapfrog as part of a process to award a grant to a third party. It considered, however, that this correspondence fell outside the scope of the request. Having considered this argument, the Commissioner accepts that this information falls outside the scope of the complainant's request for information.

24. The council also said that the request specifically requires the release of material that was exchanged between 1 January 2021 and the date of the request (23 March 2021). The council noted that whilst the requestor received similar information in response to other requests, such information falls outside of the narrow time-period stipulated in the complainant's current request. The Commissioner notes that the complainant did restrict the time frame of his request for information, and the council is correct to exclude any information falling outside of the time period stipulated by the complainant from its searches.

The Commissioner's conclusion

25. The Commissioner has considered the council's position, in conjunction with the request.
26. Whilst the Commissioner recognises that the council believes that its searches will have caught all information falling strictly within the terms of the request, the Commissioner considers that it has not carried out searches on a wide enough basis to establish, on the balance of probabilities, whether that is the case or not.
27. The Commissioner has not decided that the council does hold additional information relevant to the request. He has decided that the council has provided insufficient evidence to support the conclusion that it is more likely than not that it does not hold the information requested.
28. Having considered all the circumstances, the Commissioner therefore requires the council to carry out further searches for relevant information and to respond to the complainant's request again. This should include searches of its networked systems.
29. This decision does not preclude the possibility that its further searches will fail to locate further relevant information.

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.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

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