

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 15 September 2022

Public Authority: South Staffordshire Council
Address: Council Offices
Codsall
South Staffordshire
WV8 1PX

Decision (including any steps ordered)

1. The complainant requested from South Staffordshire Council the minutes of a meeting relating to its decision not to object to an application received by the District Land Registry for the registration of a strip of land in 2003. South Staffordshire Council stated that it did not hold any recorded information falling within the scope of the request.
2. The Commissioner's decision is that South Staffordshire Council does not hold the requested information based on the balance of probabilities.
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

4. On 12 April 2021 the complainant wrote to South Staffordshire Council (the Council) and requested information in the following terms:

"I enclose documentation regarding a land register transaction, which was signed by one of your solicitors, (name redacted), signed the document in 2003.

Could you supply me with the minutes of the District Council meeting leading up to this decision in 2003."

5. The Council initially responded on 22 April 2021. It stated that:

'There would not have been an individual decision in respect of this matter as it would have been a delegated function, therefore we are unable to supply you with any minutes'.

6. The Council issued a second response on 17 June 2021 stating:

'The information is not held due to the length of time that has passed and people have now left the employment of the Council'.

7. The complainant responded on 29 June 2021 stating that:

'After speaking to the ICO you should have kept the relevant information to your involvement to the drive which leads into Great Wyrley Cemetery. The people who are involved gave instructions to (name redacted). To give the go ahead for adverse possession, which she should not have done this, as the Council own no land in Station Street.

We are at the point where we are requesting an internal review to what happened'.

8. Following an internal review the Council wrote to the complainant on August 2021. It stated that:

'The right to request a review is in respect of the handling of your Freedom of Information request not in respect of the Council's actions in 2003.

I can only reiterate the position previously advised. The Council no longer holds records as to the actions taken in 2003. I am therefore unable to change the response to your original Freedom of Information request'.

Scope of the case

9. The complainant contacted the Commissioner on 13 October 2021 to complain about the way his request for information had been handled. In particular, he was unhappy with the Council's response stating it did not hold any recorded information falling within the scope of his request.
10. The scope of the Commissioner's investigation will be to determine whether, on a balance of probabilities', the Council holds any recorded information falling within the scope of the complainant's request. The Commissioner does not have jurisdiction to review or comment on any decision made by the Council in 2003 relating to information requested by the complainant.

Background information

11. The information requested in this case relates to a decision taken by the Council to notify the District Land Registry that it did not object to a landowners' proposed application to register a strip of land.
12. The neighbouring Great Wyrely Parish Council and Cheslyn Hay Parish Council were also approached by the Land Registry to see whether they had any objection to the proposed registration. Cheslyn Hay Parish Council did raise objections to the registration on the grounds that the land in question formed part of a right of way.
13. The complainant submitted a request for similar information to Great Wyrely Parish Council on 30 October 2020 and this matter was dealt with by the Commissioner in his Decision Notice IC-93214-Q3214¹ dated 26 May 2022.

Reasons for decision

Legislative regime – EIR

Regulation 2(1)(c) – Interpretation of environmental information

14. The information requested in this case relates to a strip of land to the side of an access road used by a garage/car servicing business in various ways, and particularly for parking customers' cars. Since the information relates to activities which are likely to affect the elements and factors of the environment, the Commissioner considers that, if held, it would fall within the definition of environmental information at Regulation 2(1)(c) of the EIR².

Procedural matters: - Regulations 5(1) and 12(4)(a)

15. Regulation 5(1) of the EIR states that a public authority that holds environmental information shall make it available on request.

¹ [ic-93214-q3h9.pdf \(ico.org.uk\)](https://www.ico.org.uk/decision-notice/93214-q3214)

² <https://www.legislation.gov.uk/uksi/2004/3391/regulation/2/made>

16. Regulation 12(4)(a) of the EIR states that a public 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 such as this one where there is a dispute between a requestor and a public authority as to whether recorded information is held, the Commissioner applies the civil test of the balance of probabilities. This is in line with the approach taken by the Information Rights Tribunal when it has been asked to consider whether information is held.
18. In determining whether information is held the Commissioner will consider any arguments and evidence provided by the requestor and also assess the relevance, reasonableness and adequacy of the enquiries and searches carried out by the public authority. He will also consider any reason why it is inherently likely or unlikely that information is held.

The complainant's view

19. The complainant believes the Council should hold information relating to its decision in May 2003 not to object to the third party application to register a strip of land with the District Land Registry and does not accept that its enquiries and searches were adequate.
20. The complainant has referred the Commissioner to meetings held by the neighbouring Great Wyrley Parish Council on 4 June 2003 and 2 December 2015 when the above land registration application was considered and discussed. He believes that the individuals in attendance at those meetings should have been approached by the Council as they would have knowledge about the matter and might have been able to provide the whereabouts of information relevant to it.

The Council's view

21. The Council has stated to the complainant that its decision to not object to the registration application would have been a delegated one and not an individual one. Therefore, it was unable to supply any minutes. It also stated that due to the length of time which had elapsed since the decision was made in 2003 and the fact that the people involved had since left, no information or records were held.
22. The Council has reminded the Commissioner that the complainant's request was for the minutes relating to its decision not to object to the registration of a strip of land at Station Street, Cheslyn Hay.
23. On receipt of the request, the Council stated that it ran a search of its 'iken' legal database for any files relating to the matter but did not locate any. It also undertook a search of its Deed Room database and reviewed the Council's minute books for 2003 but once again no files

were identified. It added that given the nature of the original matter, it would not have expected a legal file to exist and went on to explain why.

24. The Council explained that the officer involved in the original decision in 2003 no longer worked for them and was not contactable. Whilst acknowledging the complainant's suggestion that officers and councillors should have been contacted about the matter, the Council explained why this was not necessary and did not recognise the practicalities of local government. It recognised the matter was important to the complainant and acknowledged his belief that there should be a record but pointed out that the decision made, was purely routine correspondence for the Council. It added that routine correspondence relating to land it did not own or have an interest in, would not generate any form of record.
25. Reviewing the decision it took in 2003, the Council stated it was clear it did not own the land in question or any land adjoining it, therefore it had no legal interest in its registration. As such and in accordance with usual practice and delegated authorities in operation, no consultation or involvement of members would have been undertaken. The legal officer would have, as she did, confirm the Council had no interest in the land and consequently did not object to the application to register it. Therefore there was no decision to be evidenced.
26. Had it owned adjoining land or had some other interest in the matter, then the Council would have expected some form of record of decision making and/or consultation with its members. However, as the Council was not an adjoining landowner at the time, it would have no legal basis for objecting to the registration of the land and the officer responded accordingly.
27. The Council has stated to the Commissioner that it is confident that the letter from the District Land Registry asking whether it had any objection to the land registration, would have been dealt with by the legal officer as part of 'business as usual' with no involvement of other staff or members. It added the Council receives numerous pieces of correspondence relating to land matters that continue to be dealt with by legal officers without consultation undertaken or individual decisions being sought. To do otherwise would bring the Council to a 'grinding halt'.

The Commissioner's assessment

28. The Commissioner recognises this matter is important to the complainant and acknowledges his view that the Council should hold some recorded information falling within the scope of the request. However, as stated above the Commissioner has to make a decision based on a balance of probabilities taking into account not only the

views of the requestor but also the relevance, reasonableness and adequacy of the enquiries and searches carried out by the public authority.

29. In this case, the Commissioner is satisfied with the relevance, reasonableness and adequacy of the enquiries and searches carried out by the Council as outlined above and finds that, on a balance of probabilities, it does not hold any recorded information falling within the scope of the complainant's request.

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

**Laura Tomkinson
Group Manager
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